

**2014 No. 67**

**POLICE**

**The Police Service of Scotland (Performance) Regulations 2014**

*Made* - - - - - *28th February 2014*

*Laid before the Scottish Parliament* *3rd March 2014*

*Coming into force* - - - *1st April 2014*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 48 and 125(1) of the Police and Fire Reform (Scotland) Act 2012(a) and all other powers enabling them to do so.

In accordance with section 54(2) of that 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) and have considered any representations made.

**PART 1**

**General**

**Citation and commencement**

1. These Regulations may be cited as the Police Service of Scotland (Performance) Regulations 2014 and come into force on 1st April 2014.

**Interpretation**

2.—(1) In these Regulations—

“audio recording” means a recording made on any disc, tape or other device on which sounds are recorded so as to be capable of being reproduced;

“chairing constable” means the person appointed to act as chairing constable at a performance hearing or, as the case may be, further performance hearing;

“disposal” means any of the actions mentioned in regulation 40(1);

“extended final improvement notice” means a final improvement notice extended under regulation 40(1)(c);

“extended final improvement period” means the period specified by the chairing constable under regulation 40(4)(a)(i);

“final improvement notice” means a notice prepared under regulation 25(2)(a);

“final improvement period” has the meaning given by regulation 24(6)(c);

“first improvement notice” means a notice prepared under regulation 16(2)(a);

“first improvement period” has the meaning given by regulation 15(7)(c);

“first line manager” means the constable or the member of the police staff with immediate supervisory responsibility for the constable;

“further performance hearing” means a hearing arranged under regulation 42 to consider the constable’s performance following a performance hearing;

“human resources professional” means a member of the police staff who has responsibility for personnel matters relating to the Police Service;

“improvement notice” includes a first improvement notice, a final improvement notice and an extended final improvement notice;

“improvement period” means the period within which the constable’s performance is required to improve specified in an improvement notice and includes a first improvement period, a final improvement period and an extended final improvement period (see regulation 10);

“performance appeal meeting” means a meeting arranged under regulation 19 to consider an appeal by the constable against the finding and outcome of a performance meeting;

“performance hearing” means a hearing arranged under regulation 33 to consider the constable’s performance following a progress meeting;

“performance meeting” means a meeting arranged under regulation 14 to consider a constable’s performance;

“person determining the appeal” means the senior officer appointed by the deputy chief constable under regulation 45(2) to determine an appeal under regulation 44;

“police adviser” means a constable appointed to give advice on the proceedings to—

- (a) the first line manager at a performance meeting;
- (b) the second line manager at a performance appeal meeting or a progress meeting;
- (c) the senior manager at a progress appeal meeting; or
- (d) the chairing constable at a performance hearing or a further performance hearing;

“police representative” must be construed in accordance with regulation 6;

“progress appeal meeting” means a meeting arranged under regulation 28 to consider an appeal by the constable against the finding and outcome of a progress meeting;

“progress meeting” means a meeting arranged under regulation 23 to consider the constable’s performance following a performance meeting;

“second line manager” means—

- (a) in a case where the constable holds the rank of chief superintendent, an assistant chief constable, or a member of the police staff at least equivalent to the rank of assistant chief constable, designated for that purpose by the constable’s senior manager; or
- (b) in any other case, a constable or a member of the police staff who has immediate supervisory responsibility for the first line manager;

“senior manager” means a constable or a member of the police staff who (in either case) has supervisory responsibility for the second line manager;

“the Act” means the Police and Fire Reform (Scotland) Act 2012;

“the constable” means, unless the context otherwise requires, a constable to whom these Regulations apply and whose performance is being assessed in accordance with these Regulations;

“validity period” means the period for which an improvement notice is valid (see regulation 10);

“working day” means any day other than—

- (a) a Saturday or Sunday;

(b) a day which is a bank holiday in Scotland within the meaning given by paragraph 2 of Schedule 1 to the Banking and Financial Dealings Act 1971(a); or

(c) a day which is a public holiday in Scotland; and

“writing” includes electronic communications within the meaning given by section 15 of the Electronic Communications Act 2000(b) (and “written” is to be construed accordingly).

(2) In these Regulations, references to—

(a) unsatisfactory performance; and

(b) the performance of the constable being unsatisfactory,

are references to an inability or failure of the constable to perform the duties of the constable’s role or rank (or both) to a satisfactory standard.

### **Application**

3.—(1) These Regulations apply only in relation to the performance of constables below the rank of assistant chief constable who have completed their period of probation.

(2) These Regulations do not apply to—

(a) constables on temporary service outwith the Police Service (either under arrangements made under section 15 of the Act or by virtue of paragraph 8(4) of schedule 5 to the Act);

(b) persons engaged on temporary service as constables of the Police Service (either under arrangements made under section 16 of the Act or by virtue of paragraph 8(2) of schedule 5 to the Act); or

(c) special constables appointed under section 9 of the Act.

### **Revocation and transitional provision**

4.—(1) Subject to paragraphs (2) and (3), the 2013 Regulations are revoked.

(2) The 2013 Regulations continue to have effect in relation to the performance of a constable if, before 1st April 2014, that constable has received a notice in pursuance of regulation 5 of those Regulations requiring the constable to attend a first interview.

(3) Paragraph (1) does not revoke regulations 23 and 24 of, or the Schedule to, the 2013 Regulations.

(4) In this regulation—

“first interview” has the meaning given by regulation 2 of the 2013 Regulations; and

“the 2013 Regulations” means the Police Service of Scotland (Performance) Regulations 2013(c).

### **Designation of deputy chief constable**

5.—(1) The chief constable must designate a deputy chief constable to exercise the functions of the deputy chief constable under these Regulations (and references in these Regulations to “the deputy chief constable” are, unless the context otherwise requires, references to that person).

(2) The deputy chief constable may direct or authorise a constable of at least the rank of sergeant to carry out any of the deputy chief constable’s functions under these Regulations.

(3) A direction or authorisation under paragraph (2) does not affect the deputy chief constable’s—

(a) responsibility for the carrying out of delegated functions; or

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(a) 1971 c.80. Paragraph 2 of Schedule 1 has been amended by section 1 of the St Andrew’s Day Bank Holiday (Scotland) Act 2007 (asp 2).

(b) 2000 c.7. Section 15 has been amended by Schedule 17 to the Communications Act 2003 (c.21).

(c) S.S.I. 2013/61, relevantly amended by S.S.I. 2013/125.

- (b) ability to carry out delegated functions.

### **Police representative**

**6.**—(1) The constable may choose a person mentioned in paragraph (2) to act as the constable's police representative.

(2) The persons are—

- (a) in a case where the constable is a superintendent or a chief superintendent, another constable or a representative of any person representing the interests of superintendents (including chief superintendents); and
- (b) in any other case, another constable or a representative of the Police Federation for Scotland.

(3) But the constable may not choose as a police representative any person who is otherwise involved in any aspect of the constable's performance being considered in accordance with these Regulations.

(4) A police representative may—

- (a) advise the constable throughout any proceedings under these Regulations;
- (b) accompany the constable to any meeting or hearing which the constable is required to attend under these Regulations;
- (c) make representations on the constable's behalf at any meeting or hearing under these Regulations (including asking questions of any witnesses where the constable would be entitled to do so); and
- (d) make representations to the deputy chief constable concerning any aspect of the proceedings under these Regulations.

(5) The chief constable must permit any constable acting as a police representative under these Regulations to use a reasonable amount of duty time for the purpose of performing the functions mentioned in paragraph (4).

### **Procedure in constable's absence**

**7.**—(1) This regulation applies if the constable—

- (a) does not attend a meeting or hearing under these Regulations; or
- (b) participates in a performance hearing or further performance hearing by video link or other means under regulation 36(9).

(2) If this regulation applies—

- (a) the constable may be represented at the meeting or hearing by a police representative; and
- (b) the fact that the constable is not represented by a police representative does not prevent the meeting or hearing being conducted and concluded in the constable's absence.

### **Standard of proof**

**8.** A finding at any meeting or hearing under these Regulations as to whether the constable's performance has been unsatisfactory must be made on a balance of probabilities.

### **Consideration of documents**

**9.** Despite the failure by any person to provide any document in accordance with these Regulations in advance of any meeting or hearing, the person conducting or chairing that meeting or hearing may allow that document to be considered at the meeting or hearing if it is considered appropriate to do so.

### **Improvement periods and validity periods**

- 10.**—(1) Every improvement notice given under these Regulations must specify—
- (a) an improvement period; and
  - (b) a validity period.
- (2) An improvement period must be a period of not more than 12 months.
- (3) A validity period must—
- (a) commence on the same day as the improvement period specified in the improvement notice to which it relates;
  - (b) end on or after the day on which that improvement period ends; and
  - (c) subject to regulation 11(5), be a period of 12 months.
- (4) If the constable makes a sufficient improvement in performance during the improvement period specified in any improvement notice, that improvement must be maintained until the end of the validity period of that notice (if longer than the improvement period).

### **Extension of improvement and validity periods**

- 11.**—(1) A first improvement period or a final improvement period may, on the application of the constable or otherwise, be extended by a constable above the rank of chief inspector and of a rank higher than the constable.
- (2) An extended final improvement period may, on the application of the constable or otherwise, be extended by the deputy chief constable.
- (3) But an extension made under paragraph (1) or (2) must not result in any improvement period exceeding 12 months.
- (4) If an improvement period is extended, the validity period specified in the relevant improvement notice must also be extended, provided that the validity period must end not later than 6 months after the end of the improvement period as extended.
- (5) An extension of a validity period under paragraph (4) may result in that validity period, as extended, exceeding 12 months.
- (6) If any improvement period or validity period is extended, any reference in these Regulations to that improvement period or validity period must be read as a reference to that period as extended.

### **Suspension of improvement and validity periods**

- 12.**—(1) An improvement period or validity period must—
- (a) be suspended where the constable is absent from duty for a continuous period of 4 weeks or more; and
  - (b) resume when the constable returns to duty.
- (2) But paragraph (1) does not apply where the constable's absence is the subject of the proceedings under these Regulations.

## **PART 2**

### **Performance Meetings**

#### **Circumstances in which a performance meeting may be required**

- 13.** If the constable's first line manager considers that the performance of the constable is unsatisfactory, that line manager may refer the constable to a performance meeting.

### **Arrangement of performance meeting**

**14.**—(1) A first line manager who refers a constable to a performance meeting must send a notice in writing requiring the constable to attend such a meeting.

(2) A notice under paragraph (1) must give details of—

- (a) the procedures for determining the date and time of the performance meeting;
- (b) the respect in which the constable's performance is considered to be unsatisfactory;
- (c) the possible outcomes of a performance meeting, progress meeting and performance hearing;
- (d) any proposed attendance at the meeting of a human resources professional or a police adviser to advise the first line manager on the proceedings;
- (e) any proposed attendance at the meeting of any other named person and the constable's right to refuse to consent to their attendance;
- (f) the constable's right to seek advice from a police representative;
- (g) the constable's right to be represented at the meeting by a police representative; and
- (h) the requirement to provide to the first line manager, in advance of the meeting, a copy of any document on which the constable intends to rely.

(3) A notice under paragraph (1) must be accompanied by a copy of any document relied upon by the first line manager in coming to the view that the performance of the constable is unsatisfactory.

(4) The first line manager must, if reasonably practicable, agree a date and time for the meeting with the constable.

(5) If no date and time are agreed under paragraph (4), the first line manager must specify a date and time for the meeting.

(6) If a date and time are specified under paragraph (5) and—

- (a) the constable or the constable's police representative will not be available at that date and time; and
- (b) the constable proposes an alternative date and time which satisfy paragraph (7),

the meeting must be postponed to the date and time proposed.

(7) An alternative date and time must—

- (a) be reasonable; and
- (b) fall not later than 10 working days from the date specified by the first line manager under paragraph (5).

(8) When the date and time of the meeting are determined in accordance with paragraphs (4) to (7), the first line manager must send a notice in writing to the constable specifying the date, time and place of that meeting.

### **Procedure at performance meeting**

**15.**—(1) The procedure at a performance meeting is as follows.

(2) The meeting must be conducted by the first line manager.

(3) A human resources professional or a police adviser may attend the meeting to advise the first line manager on the proceedings.

(4) Any other person whose proposed attendance was notified to the constable in accordance with regulation 14(2)(e) may attend the meeting provided the constable has not refused to consent to their attendance.

(5) The first line manager must—

- (a) explain how the constable's performance is considered to be unsatisfactory;
- (b) provide the constable with an opportunity to respond; and

(c) provide the constable's police representative (if the constable has one) with an opportunity to make representations in accordance with regulation 6(4)(c) or (if applicable) 7.

(6) If, having considered any representations made in accordance with paragraph (5)(b) and (c) and any other representations made at the meeting (if any), the first line manager is satisfied that the constable's performance is satisfactory, the first line manager must inform the constable that no further action is to be taken.

(7) If, having considered any representations made in accordance with paragraph (5)(b) and (c) and any other representations made at the meeting (if any), the first line manager is satisfied that the constable's performance is unsatisfactory, the first line manager must inform the constable as to—

- (a) the respect in which the constable's performance is considered unsatisfactory;
- (b) the improvement that is required in the constable's performance;
- (c) the period within which that improvement is required to take place (to be known as "the first improvement period");
- (d) the fact that the constable will receive a written improvement notice;
- (e) the validity period of that notice and the effect of regulation 10(4); and
- (f) the circumstances in which the constable may be required to attend a progress meeting.

(8) The first line manager may postpone or adjourn the performance meeting to a later time or date if satisfied that it is necessary or expedient to do so and the procedure mentioned in regulation 14(4) to (8) applies to a postponed or adjourned meeting as it applies to the meeting postponed or adjourned.

### **Procedure following performance meeting**

**16.**—(1) As soon as reasonably practicable after the date of the conclusion of the performance meeting the first line manager must prepare and send to the constable a written record of that meeting.

(2) If at a performance meeting the performance of the constable is found to be unsatisfactory, the first line manager must, as soon as reasonably practicable after the date of the conclusion of that meeting—

- (a) prepare and send to the constable a first improvement notice; and
- (b) give to the constable written notice of—
  - (i) the constable's right to appeal under regulation 18;
  - (ii) the name of the person to whom an appeal notice must be sent;
  - (iii) the matters in relation to which an appeal may be made and the grounds of appeal;
  - (iv) the last date for lodging an appeal; and
  - (v) the constable's right to submit comments on the written record of the meeting.

(3) Subject to paragraph (4), the constable may submit written comments on the written record of the meeting to the first line manager not later than 7 working days from the date on which the copy of that record is received by the constable.

(4) The first line manager may, at the constable's request, extend the period mentioned in paragraph (3).

(5) The first line manager must ensure that the following are retained together and filed appropriately—

- (a) the first improvement notice;
- (b) the written record of the performance meeting; and
- (c) the constable's written comments on that record.

### **First improvement notices**

**17.** A first improvement notice prepared under regulation 16(2)(a) must—

- (a) record—
  - (i) the respect in which the constable's performance is considered to be unsatisfactory;
  - (ii) the improvement that is required in the constable's performance; and
  - (iii) the length of the first improvement period;
- (b) specify a validity period;
- (c) inform the constable of the circumstances in which attendance at a progress meeting may be necessary; and
- (d) be signed and dated by the first line manager.

### **Appeal against the finding and outcome of a performance meeting**

**18.—(1)** If at a performance meeting the first line manager finds that the performance of the constable is unsatisfactory, the constable may appeal against—

- (a) that finding; and
- (b) any term of the first improvement notice specified in paragraph (3) (referred to in this regulation and regulation 21 as “the relevant terms”).

(2) An appeal under paragraph (1) may only be made on one or more of the grounds of appeal specified in paragraph (4).

(3) The relevant terms are—

- (a) the respect in which the constable's performance is considered unsatisfactory;
- (b) the improvement that is required in performance; and
- (c) the length of the first improvement period.

(4) The grounds of appeal are—

- (a) that the finding of unsatisfactory performance is unreasonable;
- (b) that any of the relevant terms are unreasonable;
- (c) that there is evidence that could not reasonably have been considered at the performance meeting which could have affected materially—
  - (i) the finding of unsatisfactory performance; or
  - (ii) any of the relevant terms; and
- (d) that there was a breach of the procedures set out in these Regulations or any other unfairness which could have affected materially—
  - (i) the finding of unsatisfactory performance; or
  - (ii) any of the relevant terms.

(5) An appeal under paragraph (1) is to be commenced by the constable submitting a written appeal notice to the second line manager not later than 7 working days from the date of receipt of the first improvement notice.

(6) A notice under paragraph (5) must—

- (a) set out the finding or the relevant terms (or both) against which the appeal is made;
- (b) set out the grounds of appeal; and
- (c) be accompanied by any evidence on which the constable intends to rely.

(7) The second line manager may, at the constable's request, extend the period mentioned in paragraph (5) if satisfied that it is appropriate to do so.

(8) The submission of an appeal notice under paragraph (5) does not affect the continuing operation of a first improvement notice sent under regulation 16(2)(a).



### **Arrangement of performance appeal meeting**

**19.**—(1) As soon as reasonably practicable after receipt of an appeal notice submitted under regulation 18(5), the second line manager must decide whether to—

- (a) require the constable to attend a performance appeal meeting; or
- (b) determine the appeal without such a meeting.

(2) The second line manager may determine the appeal without a performance appeal meeting only with the agreement of the constable.

(3) If the second line manager decides to require the constable to attend a performance appeal meeting the second line manager must send to the constable a written notice giving details of—

- (a) the procedures for determining the date and time of that meeting;
- (b) any proposed attendance at the meeting of a human resources professional or a police adviser to advise the second line manager on the proceedings;
- (c) any proposed attendance at the meeting of the first line manager;
- (d) any proposed attendance at the meeting of any other named person and the constable's right to refuse to consent to their attendance;
- (e) the constable's right to seek advice from a police representative; and
- (f) the constable's right to be represented at the meeting by a police representative.

(4) The second line manager must, if reasonably practicable, seek to agree a date and time for the meeting with the constable.

(5) If no date and time are agreed under paragraph (4), the second line manager must specify a date and time for the meeting.

(6) If a date and time are specified under paragraph (5) and—

- (a) the constable or the constable's police representative will not be available at that date and time; and
- (b) the constable proposes an alternative date and time which satisfy paragraph (7),

the meeting must be postponed to the date and time proposed.

(7) An alternative date and time must—

- (a) be reasonable; and
- (b) fall not later than 10 working days from the date specified by the second line manager under paragraph (5).

(8) When the date and time of a performance appeal meeting are determined in accordance with paragraphs (4) to (7), the second line manager must send a notice in writing to the constable specifying the date, time and place of that meeting.

### **Procedure at performance appeal meeting**

**20.**—(1) The procedure at a performance appeal meeting is as follows.

(2) The meeting must be conducted by the second line manager.

(3) The following persons may attend the meeting—

- (a) a human resources professional or a police adviser to advise the second line manager on the proceedings;
- (b) the first line manager; and
- (c) any other person whose proposed attendance was notified to the constable in accordance with regulation 19(3)(d), provided the constable has not refused to consent to their attendance.

(4) The second line manager must—

- (a) provide the constable with an opportunity to make representations; and

- (b) provide the constable's police representative (if the constable has one) with an opportunity to make representations in accordance with regulation 6(4)(c) or (if applicable) 7.

(5) The second line manager may postpone or adjourn the performance appeal meeting to a later time or date if it appears necessary or expedient to do so and the procedure mentioned in regulation 19(4) to (8) applies to a postponed or adjourned meeting as it applies to the meeting postponed or adjourned.

### **Determination of appeal**

**21.**—(1) The second line manager must determine an appeal under regulation 18 in accordance with this regulation.

(2) In a case where a performance appeal meeting takes place, the second line manager must consider—

- (a) the appeal notice submitted under regulation 18(5);
- (b) any evidence accompanying that notice;
- (c) the written record of the performance meeting;
- (d) the constable's written comments on that record (if any); and
- (e) any representations made at the performance appeal meeting.

(3) In a case where no performance appeal meeting takes place, the second line manager must consider—

- (a) the appeal notice submitted under regulation 18(5);
- (b) any evidence accompanying that notice;
- (c) the written record of the performance meeting; and
- (d) the constable's written comments on that record (if any).

(4) Having considered the things mentioned in paragraph (2) or, as the case may be, (3), the second line manager may—

- (a) confirm or reverse the finding of unsatisfactory performance; and
- (b) confirm or vary any of the relevant terms against which the appeal is made.

(5) A reversal of the finding of unsatisfactory performance revokes the first improvement notice.

(6) If the second line manager—

- (a) reverses the finding of unsatisfactory performance; or
- (b) varies any of the relevant terms of the first improvement notice against which the appeal is made,

the decision of the second line manager replaces, from the date of that decision, the finding, the first improvement notice or the relevant terms against which the appeal is made.

(7) As soon as reasonably practicable after determining an appeal under regulation 18, the second line manager must—

- (a) send to the constable a written note of the second line manager's decision; and
- (b) in a case where a performance appeal meeting has taken place, send to the constable a written record of that meeting.

## PART 3

### Progress meetings

#### **Circumstances in which a progress meeting may be required**

**22.**—(1) The first line manager of a constable who has received a first improvement notice must assess the constable's performance—

- (a) at the end of the first improvement period specified in that notice; and
- (b) during any part of the validity period specified in that notice which continues after the end of the first improvement period.

(2) The first line manager must inform the constable in writing as to whether, in the first line manager's opinion—

- (a) there has been a sufficient improvement in the constable's performance by the end of the first improvement period; and
- (b) that improvement has been maintained until the end of the validity period.

(3) If the first line manager is of the opinion that there has been a sufficient improvement in the constable's performance by the end of the first improvement period, the first line manager must remind the constable of the need to maintain that improvement until the end of the validity period.

(4) If the first line manager is of the opinion that—

- (a) the constable has failed to make the required improvement in performance by the end of the first improvement period; or
- (b) where the required improvement in performance has been made by the end of that period, that improvement has not been maintained until the end of the validity period,

the first line manager must refer the constable to a progress meeting to consider the constable's performance.

(5) A progress meeting may only consider unsatisfactory performance which is similar to or connected with the unsatisfactory performance referred to in the first improvement notice.

#### **Arrangement of progress meeting**

**23.**—(1) If the first line manager refers the constable to a progress meeting under regulation 22(4), the second line manager must send a notice in writing requiring the constable to attend such a meeting.

(2) A notice under paragraph (1) must give details of—

- (a) the procedures for determining the date and time of the progress meeting;
- (b) the respect in which the constable's performance is considered to be unsatisfactory;
- (c) the possible outcomes of a progress meeting and a performance hearing;
- (d) any proposed attendance at the meeting of a human resources professional or a police adviser to advise the second line manager on the proceedings;
- (e) any proposed attendance at the meeting of the first line manager;
- (f) any proposed attendance at the meeting of any other named person and the constable's right to refuse to consent to their attendance;
- (g) the constable's right to seek advice from a police representative;
- (h) the constable's right to be represented at the meeting by a police representative; and
- (i) the requirement to provide to the second line manager, in advance of the meeting, a copy of any document on which the constable intends to rely.

(3) A notice under paragraph (1) must be accompanied by a copy of any document relied upon in coming to the view that the performance of the constable is unsatisfactory.

(4) The second line manager must, if reasonably practicable, seek to agree a date and time for the progress meeting with the constable.

(5) If no date and time are agreed under paragraph (4), the second line manager must specify a date and time for the meeting.

(6) If a date and time are specified under paragraph (5) and—

(a) the constable or the constable's police representative will not be available at that date and time; and

(b) the constable proposes an alternative date and time which satisfy paragraph (7),

the meeting must be postponed to the date and time proposed.

(7) An alternative date and time must—

(a) be reasonable; and

(b) fall not later than 10 working days from the date specified by the second line manager under paragraph (5).

(8) When the date and time of a progress meeting are determined in accordance with paragraphs (4) to (7), the second line manager must send a notice in writing to the constable specifying the date, time and place of that meeting.

### **Procedure at progress meeting**

**24.**—(1) The procedure at a progress meeting is as follows.

(2) The meeting must be conducted by the second line manager.

(3) The following persons may attend the meeting if requested to do so by the second line manager—

(a) a human resources professional or a police adviser to advise the second line manager on the proceedings;

(b) the first line manager; and

(c) any other person whose proposed attendance was notified to the constable in accordance with regulation 23(2)(f), provided the constable has not refused to consent to their attendance.

(4) The second line manager must—

(a) explain how the constable's performance is considered to be unsatisfactory;

(b) provide the constable with an opportunity to make representations in response; and

(c) provide the constable's police representative (if the constable has one) with an opportunity to make representations in accordance with regulation 6(4)(c) or (if applicable) 7.

(5) Paragraph (6) applies if, having considered any representations made in accordance with paragraph (4)(b) or (c) and any other representations made at the meeting (if any), the second line manager is satisfied that—

(a) the constable has failed to make the required improvement in performance by the end of the first improvement period; or

(b) in a case where the required improvement in performance has been made by the end of the first improvement period, that improvement has not been maintained until the end of the validity period.

(6) If this paragraph applies, the second line manager must inform the constable as to—

(a) the respect in which the constable's performance is considered to be unsatisfactory;

(b) the improvement that is required in the constable's performance;

(c) the period within which that improvement is required to take place (to be known as "the final improvement period");

(d) the fact that the constable will receive a written final improvement notice;

- (e) the validity period of that notice and the effect of regulation 10(4); and
- (f) the circumstances in which the constable may be required to attend a performance hearing.

(7) The second line manager may postpone or adjourn the meeting to a later time or date if satisfied that it is necessary or expedient to do so and the procedure mentioned in regulation 23(4) to (8) applies to a postponed or adjourned meeting as it applies to the meeting postponed or adjourned.

### **Procedure following progress meeting**

**25.**—(1) As soon as reasonably practicable after the date of the conclusion of the progress meeting the second line manager must prepare and send to the constable a written record of that meeting.

(2) Where at a progress meeting the performance of the constable is found to be unsatisfactory, the second line manager must, as soon as reasonably practicable after the date of the conclusion of that meeting—

- (a) prepare and send to the constable a final improvement notice; and
- (b) give to the constable written notice of—
  - (i) the constable's right to appeal under regulation 27;
  - (ii) the name of the person to whom an appeal notice must be sent;
  - (iii) the matters in relation to which an appeal may be made and the grounds of appeal;
  - (iv) the last date for lodging an appeal; and
  - (v) the constable's right to submit comments on the written record of the meeting.

(3) Subject to paragraph (4), the constable may submit written comments on the written record of the meeting to the second line manager not later than 7 working days from the date on which the copy of that record is received by the constable.

(4) The second line manager may, at the constable's request, extend the period mentioned in paragraph (3).

(5) The second line manager must ensure that the following are retained together and filed appropriately—

- (a) the final improvement notice;
- (b) the written record of the progress meeting; and
- (c) the constable's written comments on that record.

### **Final improvement notices**

**26.** A final improvement notice prepared under regulation 25(2)(a) must—

- (a) record—
  - (i) the respect in which the constable's performance is considered to be unsatisfactory;
  - (ii) the improvement that is required in the constable's performance; and
  - (iii) the final improvement period;
- (b) specify a validity period;
- (c) inform the constable as to the circumstances in which attendance at a performance hearing may be required; and
- (d) be signed and dated by the second line manager.

### **Appeal against the finding and outcome of a progress meeting**

**27.**—(1) Where at a progress meeting the second line manager finds that the performance of the constable is unsatisfactory, the constable may appeal against—

- (a) that finding;
- (b) any term of the final improvement notice specified in paragraph (3) (referred to in this regulation and regulation 30 as “the relevant terms”); and
- (c) the decision of the second line manager to require the constable to attend the progress meeting.

(2) An appeal under paragraph (1) may be made on one or more of the grounds of appeal specified in paragraph (4).

(3) The relevant terms are—

- (a) the respect in which the constable’s performance is considered unsatisfactory;
- (b) the improvement that is required in performance; and
- (c) the length of the final improvement period.

(4) The grounds of appeal are—

- (a) that, in relation to an appeal against the decision mentioned in paragraph (1)(c), the progress meeting did not consider only unsatisfactory performance which is similar to or connected with the unsatisfactory performance referred to in the first improvement notice;
- (b) that the finding of unsatisfactory performance is unreasonable;
- (c) that any of the relevant terms are unreasonable;
- (d) that there is evidence that could not reasonably have been considered at the progress meeting which could have affected materially—
  - (i) the finding of unsatisfactory performance; or
  - (ii) any of the relevant terms; and
- (e) that there was a breach of the procedures set out in these Regulations or any other unfairness which could have affected materially—
  - (i) the finding of unsatisfactory performance; or
  - (ii) any of the relevant terms.

(5) An appeal under paragraph (1) is to be commenced by the constable submitting a written appeal notice to the senior manager not later than 7 working days from the date of receipt of the final improvement notice.

(6) A notice under paragraph (5) must—

- (a) set out the finding or the relevant terms (or both) against which the appeal is made;
- (b) set out the grounds of appeal; and
- (c) be accompanied by any evidence on which the constable intends to rely.

(7) The senior manager may, at the constable’s request, extend the period mentioned in paragraph (5) if satisfied that it is appropriate to do so.

(8) The submission of an appeal notice under paragraph (5) does not affect the continuing operation of a final improvement notice sent under regulation 25(2)(a).

### **Arrangement of progress appeal meeting**

**28.**—(1) As soon as reasonably practicable after receipt of an appeal notice submitted under regulation 27(5), the senior manager must decide whether to—

- (a) require the constable to attend a progress appeal meeting; or
- (b) determine the appeal without such a meeting.

(2) The senior manager may determine the appeal without a progress appeal meeting only with the agreement of the constable.

(3) If the senior manager decides to require the constable to attend a progress appeal meeting the senior line manager must send to the constable a written notice giving details of—

- (a) the procedures for determining the date and time of that meeting;
- (b) any proposed attendance at the meeting of a human resources professional or a police adviser to advise the senior manager on the proceedings;
- (c) any proposed attendance at the meeting of the second line manager;
- (d) any proposed attendance at the meeting of any other named person and the constable's right to refuse to consent to their attendance;
- (e) the constable's right to seek advice from a police representative; and
- (f) the constable's right to be represented at the meeting by a police representative.

(4) The senior manager must, if reasonably practicable, seek to agree a date and time for the meeting with the constable.

(5) If no date and time are agreed under paragraph (4), the senior manager must specify a date and time for the meeting.

(6) If a date and time are specified under paragraph (5) and—

- (a) the constable or the constable's police representative will not be available at that date and time; and
- (b) the constable proposes an alternative date and time which satisfy paragraph (7),

the meeting must be postponed to the date and time proposed.

(7) An alternative date and time must—

- (a) be reasonable; and
- (b) fall not later than 10 working days from the date specified by the senior manager under paragraph (5).

(8) When the date and time of a progress appeal meeting are determined in accordance with paragraphs (4) to (7), the senior manager must send a notice in writing to the constable specifying the date, time and place of that meeting.

### **Procedure at progress appeal meeting**

**29.**—(1) The procedure at a progress appeal meeting is as follows.

(2) The meeting must be conducted by the senior manager.

(3) The following persons may attend the meeting—

- (a) a human resources professional or a police adviser to advise the senior manager on the proceedings;
- (b) the second line manager; and
- (c) any other person whose proposed attendance was notified to the constable in accordance with regulation 28(3)(d), provided the constable has not refused to consent to their attendance.

(4) The senior manager must—

- (a) provide the constable with an opportunity to make representations; and
- (b) provide the constable's police representative (if the constable has one) with an opportunity to make representations in accordance with regulation 6(4)(c) or (if applicable) 7.

(5) The senior manager may postpone or adjourn the progress appeal meeting to a later time or date if satisfied that it is necessary or expedient to do so and the procedure mentioned in regulation 28(4) to (8) applies to a postponed or adjourned meeting as it applies to the meeting postponed or adjourned.

### **Determination of appeal**

**30.**—(1) The senior manager must determine an appeal under regulation 27 in accordance with this regulation.

(2) In a case where a progress appeal meeting takes place, the senior manager must consider—

- (a) the appeal notice submitted under regulation 27(5);
- (b) any evidence accompanying that notice;
- (c) the written record of the progress meeting;
- (d) the constable's written comments on that record (if any); and
- (e) any representations made at the progress appeal meeting.

(3) In a case where no progress appeal meeting takes place, the senior manager must consider—

- (a) the appeal notice submitted under regulation 27(5);
- (b) any evidence accompanying that notice;
- (c) the written record of the progress meeting; and
- (d) the constable's written comments on that record (if any).

(4) Having considered the things mentioned in paragraph (2) or, as the case may be, (3), the senior manager may—

- (a) confirm or reverse the finding of unsatisfactory performance; and
- (b) confirm or vary any of the relevant terms against which the appeal is made.

(5) A reversal of the finding of unsatisfactory performance revokes the final improvement notice.

(6) Where the senior manager—

- (a) reverses the finding of unsatisfactory performance; or
- (b) varies any of the relevant terms against which an appeal was made,

the decision of the senior manager substitutes, from the date of the progress appeal meeting, the finding, the final improvement notice or the relevant terms against which an appeal was made.

(7) As soon as reasonably practicable after determining an appeal under regulation 27 the senior manager must—

- (a) send to the constable a written record of the senior manager's decision; and
- (b) in a case where a progress appeal meeting has taken place, send to the constable a written record of that meeting.

## **PART 4**

### **Performance hearings**

#### **Circumstances in which a performance hearing may be required**

**31.**—(1) The first line manager of a constable who has received a final improvement notice must assess the constable's performance—

- (a) at the end of the final improvement period specified in that notice; and
- (b) during any part of the validity period specified in that notice which continues after the end of the final improvement period.

(2) The first line manager must inform the constable in writing as to whether, in the first line manager's opinion—

- (a) there has been a sufficient improvement in the constable's performance by the end of the final improvement period; and



(b) that improvement has been maintained until the end of the validity period.

(3) If the first line manager is of the opinion that there has been a sufficient improvement in the constable's performance by the end of the final improvement period, the first line manager must remind the constable of the need to maintain that improvement until the end of the validity period.

(4) If the first line manager is of the opinion that—

- (a) the constable has failed to make the required improvement in performance by the end of the final improvement period; or
- (b) where the required improvement in performance has been made by the end of that period, that improvement has not been maintained until the end of the validity period,

the first line manager must refer the constable to a performance hearing to consider the constable's performance.

(5) A performance hearing may only consider unsatisfactory performance which is similar to or connected with the unsatisfactory performance referred to in the final improvement notice.

### **Appointment of chairing constable, etc.**

**32.—**(1) The deputy chief constable must appoint a constable of at least the rank of superintendent and of a rank higher than the constable to act as chairing constable at the performance hearing.

(2) The deputy chief constable may in addition appoint—

- (a) a police adviser of at least the same rank as the constable; and
- (b) a human resources professional,

to advise the chairing constable at the performance hearing.

(3) A person must not be appointed under this regulation if the deputy chief constable holds a reasonable concern as to whether that person could act impartially in relation to the constable.

(4) The constable may object to the appointment of any person under this regulation.

(5) An objection under paragraph (4) must be submitted in writing not later than 3 working days from receipt of the notice under regulation 33(1) and must indicate the constable's reasons for objecting.

(6) The deputy chief constable must decide whether to uphold an objection and must—

- (a) notify the constable in writing of that decision; and
- (b) if the objection is upheld—
  - (i) make a new appointment in accordance with this regulation; and
  - (ii) notify the constable in writing of the name of the person appointed.

(7) The deputy chief constable must arrange for the provision to every person appointed under this regulation of—

- (a) any document which was available to the first line manager in relation to the performance meeting;
- (b) any document which was available to the second line manager in relation to the progress meeting;
- (c) the records of the performance meeting and the progress meeting;
- (d) any submission made under regulation 34;
- (e) documents relating to any appeal under these Regulations; and
- (f) the first improvement notice and the final improvement notice.

### **Arrangement of the performance hearing**

**33.—**(1) If the first line manager refers the constable to a performance hearing the senior manager must send a notice in writing requiring the constable to attend such a hearing.

- (2) A notice under paragraph (1) must inform the constable as to—
- (a) the persons appointed under regulation 32(1) and (2);
  - (b) the procedures for determining the date and time of the performance hearing;
  - (c) the respect in which the constable's performance is considered unsatisfactory;
  - (d) the possible outcomes of a performance hearing;
  - (e) the effect of regulation 34;
  - (f) any proposed attendance at the hearing of the first line manager, the second line manager or the senior manager;
  - (g) any proposed attendance at the hearing of any other named person and the constable's right to refuse to consent to their attendance;
  - (h) the constable's right to seek advice from a police representative;
  - (i) the constable's right to be represented at the hearing by a police representative; and
  - (j) the requirement to provide to the chairing constable, in advance of the hearing, a copy of any document on which the constable intends to rely.
- (3) A notice under paragraph (1) must be accompanied by—
- (a) a copy of any document relied upon in coming to the view that the performance of the constable is unsatisfactory; and
  - (b) a copy of the documents mentioned in regulation 32(7).

### **Procedure on receipt of notice of performance hearing**

**34.**—(1) The constable must, not later than 20 working days from receipt, respond in writing to a notice under regulation 33(1) indicating either—

- (a) that the constable accepts the first line manager's opinion under regulation 31(4); or
- (b) that the constable does not accept that opinion.

(2) A constable who accepts the first line manager's opinion may make a written submission to the deputy chief constable.

(3) A constable who does not accept that opinion must provide a written submission explaining the reasons for not accepting that opinion.

(4) A submission under this regulation must be accompanied by any document on which the constable intends to rely at the performance hearing.

### **Witnesses**

**35.**—(1) The first line manager and the constable must, no later than 10 working days after receipt by the first line manager of the constable's response under regulation 34, supply to each other—

- (a) the name and address of any witness on whom they propose to rely at the performance hearing and a summary of the evidence each witness will give; or
- (b) notice that they do not intend to rely on any witnesses.

(2) The first line manager and the constable must then seek to agree a joint list of witnesses and provide that list to the chairing constable.

(3) If it is not possible for the first line manager and the constable to agree on a joint list of witnesses, they must each supply to the chairing constable a list of proposed witnesses.

(4) As soon as reasonably practicable after receiving lists of witnesses under paragraphs (2) or (3), the chairing constable must—

- (a) decide which, if any, of the listed witnesses should attend the performance hearing; and
- (b) notify the first line manager and the constable of that decision.

(5) The chairing constable may determine that witnesses not included in any list under this regulation (whether joint or otherwise) are to attend the performance hearing.

(6) The chairing constable must not decide, in pursuance of paragraphs (4) or (5), that any witness is to give evidence at the performance hearing unless the chairing constable reasonably considers that it is necessary for the witness to do so.

(7) The chairing constable must notify in writing any witness who is to attend the performance hearing.

### **Timing of performance hearing**

**36.—**(1) The performance hearing must take place not later than 35 working days after a notice has been sent under regulation 33(1).

(2) But the chairing constable may extend the time period mentioned in paragraph (1) if it would be in the interests of fairness to do so.

(3) If the time period is extended under paragraph (2), the chairing constable must provide written notification to both the deputy chief constable and the constable of the reasons for that extension.

(4) The chairing constable must, if reasonably practicable, agree a time and date for the performance hearing with the constable.

(5) If no date and time are agreed under paragraph (4), the chairing constable must specify a time and date for that hearing.

(6) If a date and time are specified under paragraph (5) and—

(a) the constable or the constable's police representative will not be available at that date and time; and

(b) the constable proposes an alternative date and time which satisfy paragraph (7),

the hearing must be postponed to the date and time proposed by the constable.

(7) An alternative date and time must—

(a) be reasonable;

(b) fall not later than 10 working days from the date specified by the chairing constable under paragraph (4); and

(c) fall not later than—

(i) 35 working days from the date of a notice given under regulation 33(1); or

(ii) the end of any extended period specified under paragraph (2).

(8) When the date and time of the performance hearing are determined in accordance with paragraphs (4) to (7), the chairing constable must send a notice in writing to the constable specifying the date, time and place of that hearing.

(9) The chairing constable may allow a constable or a constable's police representative (or both) who is unable, on reasonable grounds, to attend the performance hearing to participate in that hearing by video link or any other reasonable means.

### **Postponement and adjournment of performance hearing**

**37.—**(1) The chairing constable may, if satisfied that it is necessary or expedient in the circumstances—

(a) postpone to a specified date a performance hearing which has not commenced; or

(b) adjourn to a specified date a performance hearing which has commenced.

(2) A date specified under paragraph (1) may fall after the end of the period of 35 working days mentioned in regulation 36(1).

(3) If a hearing is postponed or adjourned under paragraph (1) the charring constable must notify in writing the constable, any person appointed under regulation 32(2) and the deputy chief constable of—

- (a) the revised date, time and place of the hearing; and
- (b) the reasons for the postponement or adjournment.

### **Procedure at performance hearing**

**38.**—(1) The procedure at a performance hearing is as follows.

(2) The hearing must be conducted by the charring constable.

(3) The following persons may attend the hearing if requested to do so by the charring constable—

- (a) the first line manager;
- (b) the second line manager;
- (c) the senior manager;
- (d) any person whose attendance was notified to the constable in accordance with regulation 33(2)(g), provided the constable has not refused to consent to their attendance.

(4) The charring constable must—

- (a) explain to the constable how the constable's performance is considered to be unsatisfactory; and
- (b) provide the constable with an opportunity to make representations in response; and
- (c) provide the constable's police representative (if the constable has one) with an opportunity to make representations in accordance with regulation 6(4)(c) or (if applicable) 7.

(5) The charring constable may permit the constable to ask questions of any witness.

(6) An audio recording of the hearing must be made and the constable must, on request, be supplied with a copy of that recording.

### **Finding**

**39.**—(1) Following the performance hearing the charring constable must decide whether—

- (a) the constable has failed to make the required improvement in performance by the end of the final improvement period; or
- (b) in a case where the required improvement in performance has been made by the end of that period, that improvement has been maintained until the end of the validity period.

(2) Not later than 3 working days from the conclusion of the performance hearing the charring constable must give both the constable and the first line manager written notice of—

- (a) the charring constable's decision;
- (b) the reasons for that decision; and
- (c) any disposal ordered under regulation 40.

(3) If regulation 44(1) applies, the notice given under paragraph (2) must notify the constable of the right to appeal under that regulation and of the procedure for making such an appeal.

### **Disposal**

**40.**—(1) If the charring constable decides under regulation 39(1) that the constable's performance is unsatisfactory the charring constable may, subject to paragraph (3) and (4), order—

- (a) dismissal of the constable with notice;
- (b) demotion in rank; or

(c) extension of the final improvement notice.

(2) If dismissal of the constable with notice is ordered, the period of notice must be determined by the chairing constable, but must be not less than 28 days.

(3) Extension of the final improvement notice may be ordered only where the chairing constable is satisfied that there are exceptional circumstances which justify such a disposal.

(4) If extension of the final improvement notice is ordered—

(a) the chairing constable must amend the final improvement notice—

(i) to state that if the constable does not make a sufficient improvement in performance within such reasonable period as the chairing constable specifies (being a period of no more than 6 months from the date of extension) the constable may be required to attend a further performance hearing; and

(ii) to specify a new validity period; and

(b) the chairing constable may amend the terms of the final improvement notice which relate to—

(i) the respect in which the constable's performance is considered to be unsatisfactory; or

(ii) the improvement that is required in the constable's performance.

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

**41.**—(1) If the final improvement notice is extended under regulation 40(1)(c), the first line manager must assess the constable's performance—

(a) at the end of the extended final improvement period specified in that notice; and

(b) during any part of the validity period specified in that notice which continues after the end of the extended final improvement period.

(2) The first line manager must inform the constable in writing as to whether, in the first line manager's opinion—

(a) there has been a sufficient improvement in the constable's performance by the end of the extended final improvement period; and

(b) that improvement has been maintained until the end of the validity period.

(3) If the first line manager is of the opinion that there has been a sufficient improvement in the constable's performance by the end of the extended final improvement period, the first line manager must remind the constable of the need to maintain that improvement until the end of the validity period.

(4) If, following an assessment under paragraph (1), the first line manager is of the opinion that—

(a) the constable has failed to make the required improvement in performance by the end of the extended final improvement period; or

(b) where the required improvement in performance has been made by the end of that period, that improvement has not been maintained until the end of the validity period,

the first line manager must refer the constable to a further performance hearing to consider the constable's performance.

(5) A further performance hearing may consider only unsatisfactory performance which is similar to or connected with the unsatisfactory performance referred to in the final improvement notice extended under regulation 40(1)(c).

(6) Subject to paragraph (7)—

(a) a further performance hearing must be conducted by the chairing constable who conducted the performance hearing; and

(b) the chairing constable must be advised at the further performance hearing by any person appointed under regulation 32(2) to advise at the performance hearing.

(7) If any person mentioned in paragraph (6) is unable to attend a further performance hearing the deputy chief constable may appoint a replacement in accordance with regulation 32(1) and (2) (and paragraphs (3) to (6) of that regulation apply in relation to such an appointment).

(8) The deputy chief constable must arrange for the provision to every person mentioned in paragraph (6) (or any replacement for such a person appointed under paragraph (7)) of—

- (a) any document which was available to the first line manager in relation to the performance meeting;
- (b) any document which was available to the second line manager in relation to the progress meeting;
- (c) any document which was available to the chairing constable in relation to the performance hearing;
- (d) the records of the performance meeting, the progress meeting and the performance hearing;
- (e) any submission made under regulation 34;
- (f) documents relating to any appeal under these Regulations; and
- (g) the first improvement notice, final improvement notice and extended final improvement notice.

#### **Arrangement of further performance hearing**

**42.**—(1) If the first line manager refers a constable to a further performance hearing, the senior manager must send a notice in writing requiring the constable to attend such a hearing.

(2) A notice under paragraph (1) must inform the constable as to—

- (a) the identity of the chairing constable and any person appointed to advise that constable;
- (b) the procedures for determining the date and time of the further performance hearing;
- (c) the respect in which the constable's performance is considered to be unsatisfactory;
- (d) the possible outcomes of a further performance hearing;
- (e) the effect of regulation 34 (as modified by regulation 43);
- (f) any proposed attendance at the hearing of the first line manager, the second line manager or the senior manager;
- (g) any proposed attendance at the hearing of any other named person and the constable's right to refuse to consent to their attendance;
- (h) the constable's right to seek advice from a police representative;
- (i) the constable's right to be represented at the hearing by a police representative; and
- (j) the requirement to provide to the chairing constable, in advance of the hearing, a copy of any document on which the constable intends to rely.

(3) A notice under paragraph (1) must be accompanied by a copy of any document relied upon in coming to the view that the constable's performance is unsatisfactory.

#### **Application of Regulations to further performance hearing**

**43.** Regulations 34 and 36 to 40 apply in relation to a further performance hearing as they apply in relation to a performance hearing, subject to the following modifications—

- (a) regulation 34 applies as if—
  - (i) in the opening words of paragraph (1), for “33(1)” there were substituted “42(1)”; and
  - (ii) in sub-paragraph (a) of that paragraph, for “31(4)” there were substituted “41(4)”;
- (b) regulation 36 applies as if for “33(1)”, where it appears in paragraphs (1) and (7)(c)(i), there were substituted “42(1)”;

- (c) regulation 38(3)(d) applies as if for “33(2)(g)” there were substituted “42(2)(g)”;
- (d) regulation 39(1)(a) applies as if for “final improvement period”, there were substituted “extended final improvement period”; and
- (e) regulation 40 applies as if—
  - (i) paragraphs (1)(c), (3) and (4) were omitted; and
  - (ii) in paragraph (1) the words “, subject to paragraphs (3) and (4),” were omitted.

## PART 5

### Appeal against finding at performance hearing

#### **Appeal against finding at performance hearing**

**44.**—(1) If at a performance hearing or a further performance hearing, the chairing constable finds that the constable’s performance is unsatisfactory and orders dismissal or demotion in rank, the constable may appeal against—

- (a) the finding of unsatisfactory performance; and
- (b) the disposal ordered.

(2) An appeal under paragraph (1) may be made only on one or more of the grounds of appeal specified in paragraph (3).

(3) The grounds of appeal are—

- (a) that the finding of unsatisfactory performance is unreasonable;
- (b) that the disposal ordered is unreasonable;
- (c) that there is evidence that could not reasonably have been considered at the performance hearing or further performance hearing (as the case may be) which could have affected materially—
  - (i) the finding of unsatisfactory performance; or
  - (ii) the disposal ordered; and
- (d) that there was a breach of the procedures set out in these Regulations or any other unfairness which could have affected materially—
  - (i) the finding of unsatisfactory performance; or
  - (ii) the disposal ordered.

(4) An appeal under paragraph (1) is to be commenced by the constable submitting a written appeal notice to the deputy chief constable not later than 30 working days from the date on which the constable receives the notice under regulation 39(2) of the decision in relation to which the appeal is made.

(5) A notice under paragraph (4) must—

- (a) set out the finding or the disposal (or both) against which the appeal is made;
- (b) set out the grounds of appeal;
- (c) specify whether the constable requests an appeal hearing; and
- (d) be accompanied by any evidence on which the constable intends to rely.

(6) The chief constable may, on the application of the constable, extend the period mentioned in paragraph (4) if satisfied that it is appropriate to do so.

#### **Procedure for determining appeal**

**45.**—(1) An appeal under regulation 44 must be determined in accordance with this regulation.

(2) The appeal must be determined by a senior officer who is—

- (a) appointed by the deputy chief constable;
  - (b) in a case where the appellant is a chief superintendent, a deputy chief constable other than the deputy chief constable designated by virtue of regulation 5.
- (3) If the constable requests an appeal hearing, the person determining the appeal must decide whether to—
- (a) hold an appeal hearing; or
  - (b) determine the appeal without holding such a hearing.
- (4) If the constable does not request an appeal hearing or the person determining the appeal decides not to hold such a hearing, the appeal must be determined on the basis of—
- (a) the appeal notice and any evidence sent with that notice; and
  - (b) the audio recording of the performance hearing or further performance hearing to which the appeal relates.
- (5) If the person determining the appeal decides to hold an appeal hearing, the following paragraphs of this regulation apply.
- (6) The person determining the appeal must within 30 working days of receipt of an appeal notice sent under regulation 44(4) send a notice in writing—
- (a) requiring the constable to attend an appeal hearing; and
  - (b) specifying a date and time for that hearing.
- (7) The appeal hearing is to be heard not more than 10 working days from the date on which the decision to hold that hearing was made.
- (8) The appeal hearing is to be conducted in such manner as the person determining the appeal decides, provided that—
- (a) the constable’s police representative must be permitted to attend; and
  - (b) the constable and the constable’s police representative must be permitted to make oral representations.

### **Outcome of appeal**

- 46.**—(1) The person determining the appeal may, whether after an appeal hearing or otherwise—
- (a) confirm or reverse the finding of unsatisfactory performance;
  - (b) confirm the disposal ordered; or
  - (c) order a disposal which is less severe than that ordered by the chairing constable of the performance hearing or further performance hearing (as the case may be).
- (2) But in the case of an appeal against a decision or disposal ordered at a further performance hearing, the person determining the appeal may not order a further extension of the final improvement notice.
- (3) The person determining the appeal must notify the constable in writing of the decision under paragraph (1) and the reasons for that decision.
- (4) A notice under paragraph (3) must be given as soon as reasonably practicable and no later than 90 working days from the date the appeal notice was submitted.
- (5) A demotion in rank ordered under paragraph (1)(c) has effect from the date of the notice given under paragraph (3).
- (6) Where the person determining the appeal orders under paragraph (1)(c) an extension of the final improvement notice regulation 40(3) and (4) apply to that extension, except that references to the “chairing constable” are to be read as references to the person determining the appeal.
- (7) Where the person determining the appeal confirms that—
- (a) the constable’s performance is unsatisfactory; and
  - (b) the constable is to be dismissed or demoted in rank,



the notice given under paragraph (3) must be accompanied by a notice in writing setting out the circumstances in which the constable may appeal to a police appeals tribunal and the procedure for making such an appeal.

## PART 6

### Consequential modifications

#### **Police Appeals Tribunal (Scotland) Rules 2013**

**47.** In rule 2 (interpretation) of the Police Appeals Tribunal (Scotland) Rules 2013(a), in the definition of “Performance Regulations”, for “2013” substitute “2014”.

#### **Police Service of Scotland Regulations 2013**

**48.** In regulation 11(3)(d) (personal records) of the Police Service of Scotland Regulations 2013(b), after “2013” insert “or the Police Service of Scotland (Performance) Regulations 2014.”.

*KENNY MACASKILL*

A member of the Scottish Government

St Andrew’s House,  
Edinburgh  
28th February 2014

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(a) S.S.I. 2013/63.  
(b) S.S.I. 2013/35.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations provide for the procedures for dealing with cases where the performance of a constable of the Police Service of Scotland below the rank of assistant chief constable (who has completed their probationary period) is considered to be unsatisfactory.

Part 1 makes general provision. Regulations 1 to 3 make provision about the commencement, interpretation and application of the Regulations. Regulation 4 revokes the majority of the Police Service of Scotland (Performance) Regulations 2013 dealing with police performance and makes transitional provision in relation to that revocation. Regulation 5 requires the chief constable to designate a deputy chief constable to carry out functions under the Regulations and authorises that deputy chief constable to delegate those functions to other constables of the rank of sergeant and above.

Regulation 6 sets out the representation to which a constable is entitled during the performance process. Regulation 7 specifies that meetings or hearings under these Regulations may take place when the constable does not attend and how the constable may be represented at those meetings and hearings.

Regulation 8 provides that the question of whether a constable's performance is unsatisfactory is to be determined on a balance of probabilities.

Regulation 9 entitles the person conducting or chairing a meeting or hearing under the Regulations to consider documents notice of which has not been given in advance of that meeting or hearing.

Regulations 10 to 12 make provision about the "improvement periods" and "validity periods" to be specified in improvement notices given under these Regulations. Regulation 10 requires every improvement notice to specify an improvement period and a validity period. Those periods must be no more than 12 months (although a validity period may be extended beyond 12 months if the associated improvement period is extended – regulation 11(5)). A constable's performance must improve by the end of the improvement period and that improvement must be maintained until the end of the validity period. Regulation 10 also makes provision about when a validity period must start and end and in particular provides that such a period must end on or after the date on which the associated improvement period ends.

Regulation 11 allows for improvement and validity periods to be extended. An extended improvement period must not exceed 12 months in total, while an extended validity period may exceed 12 months. Regulation 12 allows for improvement and validity periods to be suspended where the constable is absent from duty for 4 weeks or more.

Part 2 establishes the first stage in the performance process, known as "performance meetings". Regulation 13 permits a constable's first line manager to refer a constable to such a meeting if that constable's performance is considered to be unsatisfactory.

Where a constable is referred to a performance meeting, regulation 14 sets the process for arranging that meeting. The line manager must send a notice to the constable requiring attendance at the meeting specifying, among other things, the respect in which the constable's performance is considered unsatisfactory. Regulation 14 also establishes a process for the constable and the line manager to agree a date and time for the meeting.

The procedure at a performance meeting is set out in regulation 15, including provision about who may attend that meeting, the right of the constable (and any person representing the constable) to make representations and notifying the constable of the decision as to whether the constable's performance is unsatisfactory.

Regulation 16 provides for what is to happen following a performance meeting. In particular, the line manager must send a record of the meeting to the constable and, where the constable's performance has been found to be unsatisfactory, prepare and send to the constable a first improvement notice. The constable must also be informed of the right to appeal and the procedure

for making an appeal. Regulation 17 makes provision about what must be contained in a first improvement notice.

The process for appealing the decision taken at a performance meeting is set out in regulation 18. That appeal may be made against the finding of unsatisfactory performance or against certain terms of the first improvement notice. Regulation 18 also sets out the grounds on which an appeal can be made and specifies that the appeal must be made by submission of a written appeal notice. An appeal is to be determined by the constable's second line manager and may be determined with or without a further meeting. Where a meeting is required, regulation 19 details how that meeting is to be arranged and the procedure at that meeting is set out in regulation 20. Regulation 21 specifies the way in which the second line manager must decide the appeal, whether or not a meeting takes place.

Part 3 makes provision about the analysis of the constable's performance following the first stage in the process.

Regulation 22 requires the constable's line manager, at the end of the first improvement and validity periods, to decide whether the constable's performance has been satisfactory during those periods. If it has not been satisfactory, the constable must be referred to a progress meeting to consider the matter further.

Regulation 23 makes provision as to how the progress meeting is to be arranged. Regulations 24 and 25 make provision as to the procedure at and following that meeting respectively. The process is broadly similar to that for performance meetings.

Where, at a progress meeting, a constable's performance is considered to be unsatisfactory, a final improvement notice must be given. The content of that notice is specified in regulation 26.

As with performance meetings, the outcome of a progress meeting can be appealed by the constable. Regulations 27 to 30 make provision as to how an appeal is to be lodged, what can be appealed against, the arrangement of an appeal hearing (if needed), the procedure at such a meeting and the way in which an appeal is to be determined.

Part 4 sets out what is to happen at the end of the improvement and validity periods set out in a final improvement notice.

Regulation 31 requires the constable's line manager to assess the constable's performance at the end of the final improvement period and validity period specified in the final improvement notice. If the constable's performance has been unsatisfactory, the line manager must refer the constable to a performance hearing.

Where a constable has been referred under regulation 31, regulation 32 requires the deputy chief constable to appoint another constable of at least the rank of superintendent (and of a rank higher than the constable) to act as chairing constable at the performance hearing. The deputy chief constable may in addition appoint advisers to advise the chairing constable at that hearing. The constable has a right to object to any person appointed under this regulation.

Regulation 33 requires the constable's senior manager to send a notice in writing requiring the constable to attend a performance hearing. Not more than 20 working days from receipt of that notice, the constable must respond in writing indicating whether it is accepted that the constable's performance has been unsatisfactory (regulation 34). Regulation 35 sets out a process for agreeing a list of witnesses to appear at the performance hearing and regulation 36 details the timescales within which such a hearing must take place. A performance hearing may be postponed by the chairing constable in accordance with regulation 37.

Regulation 38 provides that the performance hearing must be conducted by the chairing constable, specifies who may attend that hearing and requires the constable, or a person representing the constable, to be given an opportunity to make representations.

At the end of the performance hearing, the chairing constable must decide whether or not the constable's performance is unsatisfactory and give written notice of that decision and any disposal

ordered (regulation 39). Regulation 40 sets out the disposals available, which include dismissal, demotion and extension of the final improvement notice.

Regulation 41 sets out a further process for assessment of the constable's performance where a final improvement notice has been extended. This includes referral to a further performance hearing where the constable's performance remains unsatisfactory. The arrangement of and procedure at a further performance hearing are set out in regulations 42 and 43 and are similar to those relating to an initial performance hearing.

Part 5 makes provision about appealing the outcome of a performance hearing.

Regulation 44 provides that the constable may appeal against a finding at a performance meeting of unsatisfactory performance and any disposal ordered and sets out the grounds of appeal. An appeal is to be made by submission of a written appeal notice.

Regulation 45 requires an appeal to be determined by a constable of the rank of assistant chief constable or above appointed for that purpose by the deputy chief constable. The person determining the appeal must decide whether to hold an appeal hearing for that purpose. If a hearing is required, a notice must be sent requiring the constable to attend such a meeting.

Regulation 46 specifies the possible outcomes of an appeal. These include confirmation or reversal of the finding of unsatisfactory performance, confirmation of the disposal ordered or the ordering of a less severe disposal. The outcome must be notified to the constable in writing no more than 90 working days from the date the appeal notice was submitted.

Part 6 contains consequential modifications to the Police Service of Scotland Regulations 2013 and the Police Appeals Tribunal (Scotland) Rules 2013. These modifications update references in those instruments to the now revoked Police Service of Scotland (Performance) Regulations 2013.

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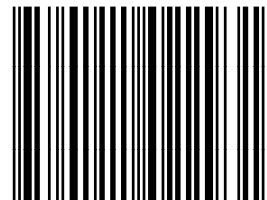
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