

## STATUTORY INSTRUMENTS

# 2020 No. 3

## The Police (Performance) Regulations 2020

### PART 2

#### General

#### Police friend

5.—(1) The officer concerned may choose—

- (a) a police officer;
- (b) a police staff member, or
- (c) <sup>F1</sup>... a person nominated by the officer's staff association,

who is not otherwise involved in the matter, to act as a police friend.

(2) The police friend may—

- (a) advise the officer concerned throughout the proceedings under these Regulations;
- (b) represent the officer at any meeting under these Regulations, unless the officer has the right to be legally represented under regulation 6 and chooses to be so represented;
- (c) make representations to the appropriate authority concerning any aspect of the proceedings under these Regulations, and
- (d) accompany the officer to any meeting which the officer is required to attend under these Regulations.

(3) Where the police friend is a police officer or a police staff member, the chief officer of police of the force of which the police friend is a member must permit the police friend to use a reasonable amount of duty time for the purposes referred to in paragraph (2).

(4) The reference in paragraph (3) to the force of which the police friend is a member includes a reference to the force maintained for the police area for which a special constable is appointed and the force in which a police staff member is serving.

**F1** Words in [reg. 5\(1\)\(c\)](#) omitted (28.6.2022) by [The Special Constables \(Membership of the Police Federation etc.\) \(England and Wales\) Regulations 2022 \(S.I. 2022/505\)](#), [regs. 1\(2\)](#), [6\(3\)\(a\)](#)

#### Commencement Information

**II** Reg. 5 in force at 1.2.2020, see [reg. 1](#)

#### Legal and other representation

6.—(1) Where the officer concerned is required to attend a third stage meeting under regulation 32, the officer has the right to be legally represented at the meeting by a relevant lawyer of the officer's choice.

(2) If the officer chooses not to be legally represented—

- (a) the meeting may take place and the officer may be dismissed or be subject to any other outcome ordered under regulation 46(2) or (6) without being legally represented, and
  - (b) the panel conducting the meeting may nevertheless be advised by a relevant lawyer at the meeting in accordance with regulation 42(3).
- (3) Except in a case where the officer concerned has the right to be legally represented and chooses to be so represented, the officer may be represented at a meeting under these Regulations only by a police friend.
- (4) A third stage meeting under regulation 32 must not take place unless the officer concerned has been notified in writing of the effect of this regulation.

**Commencement Information**

**I2** Reg. 6 in force at 1.2.2020, see [reg. 1](#)

**Provision of notices or documents**

7. Where any written notice or document is to be given to the officer concerned under these Regulations, it must be—
- (a) given to the officer in person;
  - (b) left with a person at, or sent by recorded delivery to, the officer’s last known address;
  - (c) given to the officer in person by the officer’s police friend where the police friend has agreed with the appropriate authority to deliver the notice or document, or
  - (d) given to the officer in any other manner agreed between the person who is required to give the notice or document and the officer.

**Commencement Information**

**I3** Reg. 7 in force at 1.2.2020, see [reg. 1](#)

**Procedure at meetings under these Regulations**

- 8.—(1) Where the officer concerned participates in a third stage meeting by video link or other means under regulation 38(9) or otherwise does not attend a meeting under these Regulations, the officer may nevertheless be represented at that meeting by—
- (a) a police friend, or
  - (b) where the officer was required to attend the third stage meeting under regulation 32, the officer’s relevant lawyer.
- (2) Where the officer concerned does not participate in a third stage meeting by video link or other means under regulation 38(9) or otherwise does not attend a meeting under these Regulations, the meeting may be proceeded with and concluded in the absence of the officer whether or not the officer is so represented.
- (3) During any meeting under these Regulations, the person representing the officer concerned may—
- (a) address the meeting in order to do any or all of the following—
    - (i) put the case of the officer;
    - (ii) sum up that case;

- (iii) respond on behalf of the officer to any view expressed at the meeting;
  - (iv) make representations concerning any aspect of proceedings under these Regulations, and
  - (v) in the case of a third stage meeting only, subject to paragraph (7), ask questions of any witnesses;
- (b) confer with the officer.
- (4) Where the person representing the officer concerned is a relevant lawyer, the police friend may also confer with the officer.
- (5) Where the officer concerned is participating in a third stage meeting by video link or other means in accordance with regulation 38(9), the person representing the officer or (if different) the police friend (or both) may also participate in the third stage meeting by such means together with the officer.
- (6) The police friend or relevant lawyer of the officer concerned may not answer any questions asked of the officer during a meeting.
- (7) The panel chair must determine whether any question should be put to a witness at a third stage meeting.
- (8) At any meeting under these Regulations, the person or panel conducting the meeting may not make a finding of unsatisfactory performance or attendance or gross incompetence unless—
- (a) satisfied on the balance of probabilities that there has been unsatisfactory performance or attendance or gross incompetence, or
  - (b) the officer concerned admits unsatisfactory performance or attendance or gross incompetence.
- (9) The person conducting or chairing a meeting under these Regulations may allow any document to be considered at that meeting notwithstanding that a copy of it has not been—
- (a) given to the person by the officer concerned in accordance with regulation 16(9), 19(6)(b), 23(8), 27(6)(b) or 36(3);
  - (b) given to the officer concerned in accordance with regulation 16(2) or (3), 23(2), 31(2) or 33(2), or
  - (c) made available to each panel member or given to the officer concerned under regulation 34(9).

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**Commencement Information**

**I4** Reg. 8 in force at 1.2.2020, see [reg. 1](#)

**Nominated persons**

**9.—(1)** A senior manager may appoint another person (a “nominated person”) to carry out any of the functions of the line manager or the second line manager in these Regulations.

(2) A person appointed to carry out any of the functions of the line manager under paragraph (1) may not also be appointed under that paragraph to carry out any of the functions of the second line manager.

(3) A person appointed to carry out any of the functions of the second line manager under paragraph (1) may not also be appointed under that paragraph to carry out any of the functions of the line manager.

(4) A nominated person must be a member of the police force concerned or a police staff member in the police force concerned and must be, in the opinion of the appropriate authority, of at least the same or equivalent rank or grade as the person whose functions the nominated person is carrying out.

(5) Where a nominated person is appointed, references in these Regulations to a line manager or a second line manager, as the case may be, must be construed as references to the nominated person, in relation to the functions which the nominated person has been appointed to carry out.

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**Commencement Information**

**I5** Reg. 9 in force at 1.2.2020, see [reg. 1](#)

**Reference to certain periods**

**10.**—(1) The appropriate authority may, on the application of the officer concerned or otherwise, extend the period specified in accordance with any of the regulations mentioned in paragraph (2) if it is satisfied that it is appropriate to do so.

(2) The regulations are—

- (a) regulation 17(6)(c);
- (b) regulation 25(6)(c), and
- (c) regulation 46(7)(c) and (8)(a).

(3) Unless the appropriate authority is satisfied that there are exceptional circumstances making it appropriate, any such period may not be extended if the extension would result in the total length of that period exceeding 12 months.

(4) Where an extension is granted under paragraph (1) of a period specified under a regulation mentioned in paragraph (2), any reference in these Regulations to such period is to be construed as a reference to that period as so extended.

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**Commencement Information**

**I6** Reg. 10 in force at 1.2.2020, see [reg. 1](#)

**Suspension of certain periods**

**11.**—(1) Any reference in these Regulations to a period mentioned in paragraph (2) does not include any time when the officer concerned is taking a career break determined under regulation 33(12) of the Police Regulations 2003 (leave)(1).

(2) A period is—

- (a) a period specified in accordance with regulation 17(6)(c);
- (b) the validity period of a written improvement notice specified in regulation 18(4);
- (c) a period specified in accordance with regulation 25(6)(c);
- (d) the validity period of a final written improvement notice specified in regulation 26(4);
- (e) a period specified under regulation 46(7)(c), (d) or (8)(a);
- (f) the validity period of a final written improvement notice extended under regulation 46(8)(c).

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(1) [S.I. 2003/527](#).

### Commencement Information

**17** Reg. 11 in force at 1.2.2020, see [reg. 1](#)

### Meeting following investigation under Schedule 3 to the 2002 Act

**12.**—(1) The appropriate authority must direct the line manager of the officer concerned to take the action specified in paragraph (2), (3) or (4), as the case may be, where—

- (a) regulation 32 does not apply, and
- (b) the appropriate authority—
  - (i) receives an investigator’s report submitted under paragraph 22 or 24A of Schedule 3 to the 2002 Act (final reports on investigations)(**2**), and in making a determination under paragraph 24(6) (action by the appropriate authority in response to an investigation report)(**3**) or 24C(4) of that Schedule (action by the Director General in response to an investigation report)(**4**), considers that the performance of a police officer is unsatisfactory;
  - (ii) has a duty under paragraph 23(5B) of that Schedule (duties of appropriate authority in relation to direction by Director General to bring disciplinary proceedings)(**5**) to comply with a direction to bring disciplinary proceedings, following a determination under paragraph 23(5A)(b) of that Schedule (duties of Director General on receipt or completion of report on investigation)(**6**) that a person’s performance is unsatisfactory;
  - (iii) accepts a recommendation made under paragraph 25(4C)(c) of that Schedule (reviews with respect to an investigation)(**7**) that misconduct proceedings of the form specified in the recommendation are brought;
  - (iv) accepts a recommendation made under paragraph 25(4E)(c) of that Schedule that misconduct proceedings of the form specified in the recommendation are brought;
  - (v) accepts a recommendation made under paragraph 27(3A) of that Schedule (recommendation of Director General to appropriate authority)(**8**) in relation to the unsatisfactory performance of a police officer, or
  - (vi) has a duty under paragraph 27(4)(b) of that Schedule (duties with respect to disciplinary proceedings etc)(**9**) to comply with a direction to give effect to a recommendation referred to in paragraph (iii) or (v).

(2) Paragraph 22 was substituted by paragraphs 1, 11 and 21 of Schedule 12 to the Serious Organised Crime and Police Act 2005 (“the 2005 Act”) and amended by paragraphs 1, 3 and 12 of Schedule 23 to the Criminal Justice and Immigration Act 2008 (“the 2008 Act”) and section 19 of, and paragraph 47 of Schedule 5, and paragraphs 15 and 56 of Schedule 9, to the Policing and Crime Act 2017 (“the 2017 Act”). Paragraph 24A was inserted by paragraphs 1, 11 and 24 of Schedule 12 to the 2005 Act and amended by paragraphs 1, 3 and 15 of Schedule 23 to the 2008 Act and section 18 of, and paragraphs 9, 28 and 47 of Schedule 5, and paragraphs 15 and 56 of Schedule 9, to the 2017 Act.

(3) Paragraph 24(6) was substituted by paragraph 14(6) of the Schedule 23 to the 2008 Act and amended by paragraph 14(3) of Schedule 14 to the Police Reform and Social Responsibility Act 2011 and paragraphs 27(2) and 47(h)(xiii) of Schedule 5 to the 2017 Act.

(4) Paragraph 24C was inserted by paragraphs 1, 11 and 24 of Schedule 12 to the 2005 Act and amended by section 138 of, and paragraph 95 of Schedule 11 to, the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12) (“the 2014 Act”) and paragraphs 15 and 56 of Schedule 9 to the 2017 Act.

(5) Paragraph 23(5B) was inserted by paragraphs 9 and 26 of Schedule 5 to the 2017 Act.

(6) Paragraph 23(5A) was inserted by paragraphs 9 and 26 of Schedule 5 to the 2017 Act and amended by paragraphs 15 and 56 of Schedule 9 to that Act.

(7) Paragraph 25(4A) to (4J) was inserted by paragraphs 29 and 34(1) and (5) of Schedule 5 to the 2017 Act and amended by paragraphs 15 and 56 of Schedule 9 to that Act.

(8) Paragraph 27(3A) was inserted by section 138(2) and (4) of the 2014 Act and amended by paragraph 56(2) of Schedule 9 to the 2017 Act.

(9) Paragraph 27(4) was amended by paragraphs 15 and 56 of Schedule 9 to the 2017 Act.

(2) In a case where—

- (a) the officer concerned has received a written improvement notice under regulation 18 or 46 in relation to unsatisfactory performance which is similar to or connected with the unsatisfactory performance to which the determination mentioned in paragraph (1)(b)(i) or (ii) or the recommendation mentioned in paragraph (1)(b)(iii), (iv) or (v) relates, and
- (b) the validity period of the written improvement notice, within the meaning of regulation 18(4) or 46(7)(d), has not expired,

the line manager must require the officer to attend a second stage meeting.

(3) In a case where—

- (a) the officer concerned has received a final written improvement notice under regulation 26 or 46 in relation to unsatisfactory performance which is similar to or connected with the unsatisfactory performance to which the determination mentioned in paragraph (1)(b)(i) or (ii) or the recommendation mentioned in paragraph (1)(b)(iii), (iv) or (v) relates, and
- (b) the validity period of the final written improvement notice, within the meaning of regulation 26(4) or paragraph (7)(d), or, where the period is extended under paragraph (8), paragraph (8)(c), of regulation 46 has not expired,

the line manager must require the officer to attend a third stage meeting.

(4) In any other case, the line manager must require the officer concerned to attend a first stage meeting.

(5) The line manager must comply with a direction given by the appropriate authority under paragraph (1).

(6) Where a police officer is required to attend a meeting under this regulation—

- (a) regulations 16 to 21 apply, if the meeting is a first stage meeting;
- (b) regulations 23 to 29 apply, if the meeting is a second stage meeting; and
- (c) regulations 31, 34 to 39 and 42 to 49 apply, if the meeting is a third stage meeting,

but this is subject to paragraphs (7) and (8).

(7) Subject to the harm test under these Regulations (see regulation 4(3)), the duty to provide documents in each of regulations 16(2), 23(2) and 31(2) has effect as a duty to provide the officer concerned with a copy of—

- (a) the investigator's report submitted under paragraph 22 or 24A of Schedule 3 to the 2002 Act;
- (b) any determination of the Director General under paragraph 23(5A)(b) of that Schedule;
- (c) any recommendation of the Director General made under paragraph 25(4C)(c) of that Schedule,
- (d) any recommendation of a local policing body made under paragraph 25(4E)(c) of that Schedule, and
- (e) any recommendation of the Director General made under paragraph 27(3A) of that Schedule.

(8) Where a police officer is required to attend a third stage meeting under paragraph (3) by reason of the fact that the officer is subject to a final written improvement notice issued under regulation 46—

- (a) the meeting must be conducted by the same panel as conducted the initial third stage meeting;
- (b) regulation 48(11) to (15) apply in relation to that panel, and

(c) the officer concerned does not have the right to object to panel members under regulation 35, except in accordance with regulation 48(15).

(9) Where the appropriate authority fails to make the determination referred to in paragraph (1)(b)(i) (in so far as it involves consideration of the performance of a police officer) before the end of 15 working days beginning with the first working day after receipt of the investigator's report, it must notify the officer concerned of the reason for this.

#### Commencement Information

**18** Reg. 12 in force at 1.2.2020, see [reg. 1](#)

#### Provision of information to the Director General

**13.—**(1) This regulation applies in a case where—

- (a) paragraph 18 or 19 of Schedule 3 to the 2002 Act (investigations directed by or by the Director General) applied, or
- (b) paragraph 16 of that Schedule (investigations by the appropriate authority on its own behalf) applied and—
  - (i) the Director General—
    - (aa) made a recommendation under paragraph 25(4C)(c) of that Schedule (reviews with respect to an investigation) which the appropriate authority accepted;
    - (bb) made a recommendation under paragraph 27(3A) of that Schedule (recommendation of Director General to appropriate authority) which the appropriate authority accepted, or
    - (cc) gave a direction to the appropriate authority under paragraph 27(4)(a) of that Schedule (direction by Director General where appropriate authority does not take steps to secure that full effect is given to Director General's recommendation), or
  - (ii) a local policing body made a recommendation under paragraph 25(4E)(c) of that Schedule (reviews with respect to an investigation) which the appropriate authority accepted.

(2) Where this regulation applies, the appropriate authority must—

- (a) send the Director General a copy of—
  - (i) any written record and written improvement notice given to the officer concerned under regulation 18(5);
  - (ii) any written notice and written summary given to the officer concerned under regulation 21(9);
  - (iii) any written notice as to improvement in performance or attendance under regulation 22(1)(b);
  - (iv) any written record and final written improvement notice given to the officer concerned under regulation 26(5);
  - (v) any written notice and written summary given to the officer concerned under regulation 29(9);
  - (vi) any written notice as to improvement in performance or attendance under regulation 30(1)(b);

- (vii) any written decision given to the officer concerned under regulation 45(3);
  - (viii) any final written improvement notice issued or extended under regulation 46(3);
  - (ix) any written improvement notice issued under regulation 46(6);
  - (x) any written notice as to improvement in performance or attendance under regulation 48(1)(b), and
- (b) notify the Director General if it extends, under regulation 10(1), any period specified in accordance with regulation 17(6)(c), 25(6)(c) or 46(7)(c) or (8)(a).

**Commencement Information**

**I9** Reg. 13 in force at 1.2.2020, see [reg. 1](#)

**Meeting following referral under the Conduct Regulations**

**14.**—(1) Where neither regulation 24 nor regulation 32 applies and the appropriate authority assesses under regulation 14(2)(b), 23(5)(b) or 27(2)(a)(iii) of the Conduct Regulations that a matter should be referred to be dealt with under these Regulations—

- (a) the appropriate authority must direct the line manager of the officer concerned to take the action specified in regulation 12(2), (3) or (4), as the case may be, and
- (b) paragraphs (2) to (8) of regulation 12 apply, with the following modifications—
  - (i) in each of paragraphs (2)(a) and (3)(a), for the words from “the determination” to “(1)(c) or (d)” substitute “the assessment mentioned in regulation 14(1)”;
  - (ii) in paragraph (5), for “paragraph (1)” substitute “regulation 14(2)(a)”;
  - (iii) in paragraph (6), for “this regulation” substitute “regulation 14”;
  - (iv) in paragraph (7), for sub-paragraphs (a) to (c) substitute “, where relevant, the investigator’s report submitted under regulation 21 of the Conduct Regulations.”.

(2) In paragraph (1)(b)(iv), “investigator” is to be construed in accordance with the definition of that word in regulation 2(1) of the Conduct Regulations.

**Commencement Information**

**I10** Reg. 14 in force at 1.2.2020, see [reg. 1](#)



**Changes to legislation:**

There are currently no known outstanding effects for the The Police (Performance) Regulations 2020, PART 2.