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STATUTORY RULES OF NORTHERN IRELAND

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**2016 No. 42**

The Police (Performance and Attendance)  
Regulations (Northern Ireland) 2016

PART 1

Preliminary

**Citation and commencement**

1. These Regulations may be cited as the Police (Performance and Attendance) Regulations (Northern Ireland) 2016 and shall come into operation on 1<sup>st</sup> June 2016.

**Revocation and transitional provisions**

2.—(1) — Subject to paragraph (2), the Police (Unsatisfactory Performance and Attendance) Regulations (Northern Ireland) 2010(1) are revoked.

(2) Where formal unsatisfactory performance or attendance procedures have been commenced for the member before 1<sup>st</sup> June 2016 nothing in these Regulations shall apply and the Regulations mentioned in paragraph (1) shall continue to have effect.

**Application**

3. These Regulations shall not apply in relation to—

- (a) a member above the rank of Chief Superintendent;
- (b) members of the rank of constable who have not yet completed their period of probation.

**Interpretation and delegation**

4.—(1) The Interpretation Act (Northern Ireland) 1954(2) applies to these Regulations as it applies to an Act of the Assembly. In these Regulations—

“the 1996 Act” means the Police Act 1996(3);

“the 1998 Act” means the Police (Northern Ireland) Act 1998;

“the 2000 Act” means the Police (Northern Ireland) Act 2000(4);

“the Police Regulations” means the Police Service of Northern Ireland Regulations 2005(5);

“appropriate authority” means the Chief Constable;

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(1) [S.R. 2010 No. 47](#).

(2) [1954 c.33 \(N.I.\)](#).

(3) [1996 c.16](#).

(4) [2000 c.32](#).

(5) [S.R. 2005 No. 547](#) to which there are amendments not relevant to these Regulations.

“bank holiday” means a day which is a bank holiday under the Banking and Financial Dealings Act 1971<sup>(6)</sup> in Northern Ireland;

“document” means anything in which information of any description is recorded and includes any recording of a visual image or images;

“first stage appeal meeting” has the meaning assigned to it by regulation 16;

“first stage meeting” has the meaning assigned to it by regulation 12;

“gross incompetence” means a serious inability or serious failure of a member to perform the duties of his rank or the role he is currently undertaking to a satisfactory standard or level, to the extent that dismissal would be justified, except that no account shall be taken of the attendance of a member when considering whether he has been grossly incompetent;

“human resources professional” means a person employed under section 4 of the 2000 Act or a member who, in either case, has responsibility for personnel matters relating to members;

“interested party” means a person whose appointment could reasonably give rise to a concern as to whether he could act impartially under these Regulations;

“line manager” means a member having supervisory or managerial responsibility for the member concerned;

“nominated person” means a person appointed by a senior manager in accordance with regulation 9;

“member” means a member of the police service;

“member concerned” means the member in respect of whom proceedings under these Regulations are, or are proposed to be, taken;

“panel” means a panel appointed by the appropriate authority in accordance with regulation 30 subject to any change to the membership of that panel in accordance with regulation 31 and to the provisions of regulations 41 and 42;

“panel chair” means the chair of the panel;

“police force” means the police service, a police force within the meaning of section 101 of the 1996 Act<sup>(7)</sup>, or the Police Service of Scotland, within the meaning of section 6 of the Police and Fire Reform (Scotland) Act 2012<sup>(8)</sup>;

“police friend” means a person chosen by the member concerned in accordance with regulation 5;

“police officer” means a member of a police force;

“the police service” means the Police Service of Northern Ireland or the Police Service of Northern Ireland Reserve;

“police support staff” has the same meaning as in section 4(6) of the 2000 Act;

“proposed witness” means a witness whose attendance at a third stage meeting the member concerned or the appropriate authority (as the case may be) wishes to request of the panel chair;

“relevant terms of the final written improvement notice” has the meaning assigned to it by regulation 23;

“relevant terms of the written improvement notice” has the meaning assigned to it by regulation 16;

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(6) 1971 c.80.  
(7) 1996 c.16.  
(8) 2012 asp 8.

“second line manager” means the person appointed by the appropriate authority to act as the second line manager for the purposes of these Regulations in relation to the member concerned and who is either—

- (a) a member of the police service having supervisory or managerial responsibility for the line manager and who is senior in rank to the line manager, or
- (b) a police support staff member who has responsibility for the line manager;

“second stage appeal meeting” has the meaning assigned to it by regulation 23;

“second stage meeting” has the meaning assigned to it by regulation 19;

“senior manager” means—

- (a) the member or police support staff member who is for the time being the supervisor of the person who is, in relation to the member concerned, the second line manager; or
- (b) in the absence of such supervisor, the member or police support staff member nominated by the appropriate authority to carry out any of the functions of such supervisor under these Regulations, being of at least the rank above the person who is, in relation to the member concerned, the second line manager;

“senior officer” means a member above the rank of chief superintendent;

“staff association” means—

- (a) in relation to a member of the rank of chief inspector or below, the Police Federation for Northern Ireland; and
- (b) in relation to a member of the rank of superintendent or chief superintendent, the Police Superintendents’ Association for Northern Ireland;

“third stage meeting” has the meaning assigned to it by regulations 26 and 28;

“unsatisfactory attendance” means a level of absence which the Chief Constable has determined is unacceptable or unsustainable;

“unsatisfactory performance” means an inability or failure of a member to perform the duties of the role or rank he is currently undertaking to a satisfactory standard or level;

“unsatisfactory performance procedures” means the procedures set out in these Regulations;

“validity period” has the meaning assigned to it by regulations 15(4), 22(4), 39(7)(d) and 39(8)(c); and

“working day” means any day other than a Saturday or Sunday or a day which is a bank holiday or a public holiday in Northern Ireland.

(2) In these Regulations—

- (a) “unsatisfactory performance or attendance” may be construed as a reference to either unsatisfactory performance or unsatisfactory attendance or both;
- (b) “performance or attendance” may be construed as a reference to performance or attendance or both.

(3) The appropriate authority may, subject to paragraph (4), delegate any of its functions under these Regulations to—

- (a) a member of at least the rank of chief inspector; or
- (b) a member of police support staff who, in the opinion of the appropriate authority is of at least a similar level of seniority to a chief inspector.

(4) Where the appropriate authority delegates its functions under regulation 28, the decisions shall be authorised by a senior officer.

## PART 2

### General

#### **Police friend**

5.—(1) The member concerned may choose a police officer who is not otherwise involved in the matter, to act as his police friend.

(2) A police friend may—

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

(3) The Chief Constable shall permit a police friend who is a member of the police service to use a reasonable amount of duty time for the purposes referred to in paragraph (2).

#### **Legal representation**

6.—(1) Where a member is required to attend a third stage meeting, he has the right to be legally represented at such meeting by counsel or a solicitor of his choice.

(2) If such a member chooses not to be legally represented—

- (a) such meeting may take place and he may be dismissed or receive any other outcome under regulation 39(2) or (6) without his being legally represented; and
- (b) the panel conducting such meeting may nevertheless be advised by counsel or a solicitor at the meeting in accordance with regulation 37(4).

(3) Except in a case where the member concerned has the right to be legally represented and chooses to be so represented, he may be represented at a meeting under these Regulations only by a police friend.

(4) A third stage meeting under regulation 28 shall not take place unless the member concerned has been notified in writing of the effect of this regulation.

#### **Service of notices or documents**

7.—(1) Subject to paragraph (2), any written notice or document to be given or supplied to the member concerned under these Regulations shall be given to him in person.

(2) Where the appropriate authority reasonably believes that the member concerned is avoiding service the written notice or document shall be left with some person at, or sent by recorded delivery to, his last known address.

#### **Procedure at meetings under these Regulations**

8.—(1) Where the member concerned does not attend a meeting under these Regulations or where the member concerned participates in a third stage meeting by video link or other means under regulation 34(7), he may nonetheless be represented at that meeting by his—

- (a) police friend; or

- (b) where the member is required to attend the third stage meeting under regulation 27 or 28, his counsel or a solicitor.
- (2) Where the member concerned does not attend a meeting under these Regulations or participate in a third stage meeting by video link or other means under regulation 34(7), the meeting may be proceeded with and concluded in the absence of the member concerned whether or not he is so represented.
- (3) During any meeting under these Regulations, the person representing the member concerned may—
- (a) address the meeting in order to do any or all of the following—
    - (i) put the case of the member concerned;
    - (ii) sum up that case;
    - (iii) respond on behalf of the member concerned 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 member concerned.
- (4) Where the person representing the member concerned is counsel or a solicitor, the police friend of the member concerned may also confer with the member concerned.
- (5) Where the member concerned is participating in a third stage meeting by video link or other means in accordance with regulation 34(7), the person representing the member or (if different) his police friend (or both) may also participate in the third stage meeting by such means together with the member concerned.
- (6) The police friend, or counsel or solicitor of the member concerned may not answer any questions asked of the member concerned during a meeting.
- (7) Whether any question should or should not be put to a witness at a third stage meeting shall be determined by the panel chair.
- (8) At any meeting under these Regulations, the person or the panel conducting the meeting shall not make a finding of unsatisfactory performance or attendance or gross incompetence unless—
- (a) he is or they are satisfied on the balance of probabilities that there has been unsatisfactory performance or attendance or gross incompetence; or
  - (b) the member concerned consents to such a finding.
- (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) supplied to him by the member concerned in accordance with regulation 13(6), 16(6)(b), 20(6), 23(6)(b) or 32(3);
  - (b) supplied to the member concerned in accordance with regulation 13(2), 20(2), 27(2) or 29(2); or
  - (c) made available to each panel member or given to the member concerned under regulation 30(11).

### **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) Where a person is appointed to carry out any of the functions of the line manager under paragraph (1) he may not also be appointed to carry out any of the functions of the second line manager under that paragraph.

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

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

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

### **References to certain periods**

**10.**—(1) The appropriate authority may, on the application of the member 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 mentioned in this paragraph are—

- (a) regulation 14(6)(c); and
- (b) regulation 21(6)(c); and
- (c) regulation 39(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) to a period specified under a regulation mentioned in paragraph (2), any reference in these Regulations to such period shall be construed as a reference to that period as so extended.

### **Suspension of certain periods**

**11.**—(1) Any reference in these Regulations to a period mentioned in paragraph (2) shall not include any time the member concerned is taking a career break under regulation 32(13) of the Police Regulations (leave) and the determination of the Department of Justice made under that regulation.

(2) The periods mentioned in this paragraph are—

- (a) a period specified in accordance with regulation 14(6)(c);
- (b) the validity period of a written improvement notice;
- (c) a period specified in accordance with regulation 21(6)(c);
- (d) the validity period of a final written improvement notice;
- (e) a period specified under regulation 39(7)(c) or (8)(a);
- (f) the validity period of a final written improvement notice extended under regulation 39.

## PART 3

### First stage

#### **Circumstances in which a first stage meeting may be required**

**12.** Where the member's attendance is unsatisfactory or where the line manager for a member considers that the performance of that member is unsatisfactory, he may require the member concerned to attend a meeting (in these Regulations referred to as a first stage meeting) to discuss the performance or attendance of the member concerned.

#### **Arrangement of first stage meeting**

**13.—(1)** Where the line manager requires a member to attend a first stage meeting, he shall give a notice in writing to the member concerned—

- (a) requiring him to attend a first stage meeting of the unsatisfactory performance procedures with the line manager;
- (b) summarising the reasons why his performance or attendance is considered unsatisfactory;
- (c) informing him of the possible outcomes of a first stage meeting, a second stage meeting and a third stage meeting;
- (d) informing him that a human resources professional or a police officer may attend the meeting to advise the line manager on the proceedings;
- (e) informing him that, if he consents, any other person specified in the notice may attend the meeting;
- (f) informing him that he may seek advice from a representative of his staff association;
- (g) informing him that he may be accompanied and represented at the meeting by a police friend; and
- (h) informing him that he must provide to the line manager in advance of the meeting a copy of any document he intends to rely on at the meeting.

(2) Such notice shall be accompanied by a copy of any document relied upon by the line manager in requiring the member concerned to attend a first stage meeting in accordance with regulation 12.

(3) The line manager shall, if reasonably practicable, agree a date and time for the meeting with the member concerned.

(4) Where no date and time is agreed under paragraph (3), the line manager shall specify a date and time for the meeting.

(5) The line manager shall give to the member concerned a notice in writing of the date and time of the first stage meeting determined in accordance with paragraphs (3) and (4) and of the place of the meeting.

(6) In advance of the first stage meeting, the member concerned shall provide the line manager with a copy of any document he intends to rely on at the meeting.

#### **Procedure at first stage meeting**

**14.—(1)** The following provisions of this regulation apply to the procedure to be followed at the first stage meeting.

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

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

(4) Any other person specified in the notice referred to in regulation 13(1) may attend the meeting if the member concerned consents to such attendance.

(5) The line manager shall—

- (a) explain to the member concerned the reasons why the member's attendance is unsatisfactory or why the line manager considers that the member's performance is unsatisfactory;
- (b) provide the member concerned with an opportunity to make representations in response;
- (c) provide his police friend (if he has one) with an opportunity to address the meeting in accordance with regulation 8(3)(a).

(6) If, after considering any representations made in accordance with paragraph (5)(b) or (c), the line manager finds that the performance or attendance of the member concerned has been unsatisfactory, he shall—

- (a) inform the member concerned in what respect his performance or attendance is considered unsatisfactory;
- (b) inform the member concerned of the improvement that is required in his performance or attendance;
- (c) inform the member concerned that, if a sufficient improvement is not made within such reasonable period as the line manager shall specify (being a period not greater than 12 months), he may be required to attend a second stage meeting in accordance with regulation 19 and the line manager shall specify the date on which this period ends;
- (d) inform the member concerned that he will receive a written improvement notice; and
- (e) inform the member concerned that if the sufficient improvement referred to in sub-paragraph (c) is not maintained during any part of the validity period of such notice remaining after the expiry of the period specified in accordance with sub-paragraph (c), he may be required to attend a second stage meeting in accordance with regulation 19.

(7) The line manager may, if he considers it appropriate, recommend that the member concerned seeks assistance in relation to any matter affecting his health or welfare.

(8) The line manager may postpone or adjourn the meeting to a specified later time or date if it appears to him necessary or expedient to do so.

### **Procedure following first stage meeting**

**15.—**(1) The line manager shall, as soon as reasonably practicable after the date of the conclusion of the first stage meeting—

- (a) cause to be prepared a written record of the meeting; and
- (b) where he found at the meeting that the performance or attendance of the member concerned has been unsatisfactory, cause to be prepared a written improvement notice.

(2) Where the member concerned has failed to attend a first stage meeting, if the line manager finds that the performance or attendance of the member has been unsatisfactory, he shall as soon as reasonably practicable—

- (a) cause to be prepared a written improvement notice; and
- (b) if the police friend of the member concerned attended the meeting, cause to be prepared a written record of the meeting.

(3) A written improvement notice shall—

- (a) record the matters of which the member concerned was informed (or would have been informed had he attended the meeting) under sub-paragraphs (a) to (c) and (e) of regulation 14(6);



- (b) state the period for which it is valid; and
  - (c) be signed and dated by the line manager.
- (4) A written improvement notice shall be valid for a period of 12 months from the date of the notice (the “validity period”).
- (5) The line manager shall give a copy of any written record and any written improvement notice to the member concerned as soon as reasonably practicable after they have been prepared.
- (6) Where the line manager finds that the performance or attendance of the member concerned has been unsatisfactory and has caused to be prepared a written improvement notice, he shall, at the same time as supplying the documents mentioned in paragraph (5), notify the member concerned in writing of the matters set out in regulation 16, of the name of the person to whom a written notice of appeal must be given under that regulation, of his entitlements under paragraphs (7) and (8) and of the effect of paragraph (9).
- (7) Subject to paragraphs (8) and (9), the member concerned shall be entitled to submit written comments on any written record to the line manager before the end of 7 working days beginning with the first working day after the day on which the copy is received by the member concerned.
- (8) The line manager may, on the application of the member concerned, extend the period specified in paragraph (7) if he is satisfied that it is appropriate to do so.
- (9) The member concerned shall not be entitled to submit written comments on the written record if he has exercised his right to appeal under regulation 16.
- (10) The line manager shall ensure that any written record, any improvement and any written comments of the member concerned on the written record are retained together and filed.

#### **Appeal against the finding and outcome of a first stage meeting**

**16.—**(1) This regulation applies where, at the first stage meeting, the line manager found that the performance or attendance of the member concerned has been unsatisfactory.

- (2) Where this regulation applies, the member concerned may appeal against—
- (a) such finding; or
  - (b) any of the matters specified in paragraph (3) and recorded in the written improvement notice (in these Regulations referred to as the relevant terms of the written improvement notice),

or both.

- (3) The matters specified in this paragraph are—
- (a) the respect in which the attendance of the member is unsatisfactory or the performance of the member concerned is considered unsatisfactory;
  - (b) the improvement that is required in his performance or attendance;
  - (c) the length of the period specified by the line manager in accordance with regulation 14(6) (c).
- (4) The only grounds of appeal under this regulation are—
- (a) that the finding of unsatisfactory performance or attendance was unreasonable;
  - (b) that any of the relevant terms of the written improvement notice are unreasonable;
  - (c) that there is evidence that could not reasonably have been considered at the first stage meeting which could have materially affected the finding of unsatisfactory performance or attendance or any of the relevant terms of the written improvement notice;

- (d) that there was a breach of the procedures set out in these Regulations or other unfairness which could have materially affected the finding of unsatisfactory performance or attendance or any of the relevant terms of the written improvement notice.
- (5) Any appeal shall be commenced by the member concerned giving written notice of appeal to the second line manager before the end of 7 working days beginning with the first working day after receipt of the documents referred to in regulation 15(5).
- (6) Such notification must—
- (a) set out the grounds of appeal of the member concerned; and
  - (b) be accompanied by any evidence on which the member concerned relies.
- (7) The second line manager may, on the application of the member concerned, extend the period specified in paragraph (5) if he is satisfied that it is appropriate to do so.
- (8) Subject to paragraph (9), the meeting at which the appeal will be heard (referred to in these Regulations as the first stage appeal meeting) shall take place before the end of 7 working days beginning with the first working day after the day on which the notification under paragraph (5) is received by the second line manager.
- (9) A first stage appeal meeting may take place after the period of 7 working days referred to in paragraph (8) if the second line manager considers it necessary or expedient, in which case he shall notify the member concerned of his reasons in writing.

#### **Arrangement of first stage appeal meeting**

- 17.**—(1) As soon as reasonably practicable after receipt by the second line manager of the notification of appeal referred to in regulation 16(5), the second line manager shall give a notice in writing to the member concerned—
- (a) informing him of the procedures for determining the date and time of the meeting under paragraphs (2) and (3);
  - (b) informing him that a human resources professional or a police officer may attend the meeting to advise the second line manager on the proceedings;
  - (c) informing him that, if he consents, any other person specified in the notice may attend the meeting;
  - (d) informing him that he may seek advice from a representative of his staff association; and
  - (e) informing him that he may be accompanied and represented at the meeting by a police friend.
- (2) The second line manager shall, if reasonably practicable, agree a date and time for the meeting with the member concerned.
- (3) Where no date and time is agreed under paragraph (2), the second line manager shall specify a date and time for the meeting.
- (4) The second line manager shall give to the member concerned a notice in writing of the date and time of the first stage appeal meeting determined in accordance with paragraphs (2) and (3) and of the place of the meeting.

#### **Procedure at first stage appeal meeting**

- 18.**—(1) The following provisions of this regulation apply to the procedure to be followed at a first stage appeal meeting.
- (2) The meeting shall be conducted by the second line manager.

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

(4) Any other person specified in the notice referred to in regulation 17(1) may attend the meeting if the member concerned consents to such attendance.

(5) The second line manager shall—

- (a) provide the member concerned with an opportunity to make representations; and
- (b) provide his police friend (if he has one) with an opportunity to address the meeting in accordance with regulation 8(3)(a).

(6) After considering any representations made in accordance with paragraph (5), the second line manager may—

- (a) confirm or reverse the finding of unsatisfactory performance or attendance;
- (b) confirm or vary the relevant terms of the written improvement notice appealed against.

(7) Where the second line manager has reversed the finding of unsatisfactory performance or attendance, he shall also revoke the written improvement notice.

(8) The second line manager may postpone or adjourn the meeting to a specified later time or date if it appears to him necessary or expedient to do so.

(9) As soon as reasonably practicable after the conclusion of the meeting, the member concerned shall be given written notice of the second line manager's decision and a written summary of the reasons for that decision, but in any event, the member concerned shall be given written notice of the decision before the end of 3 working days beginning with the first working day after the conclusion of the meeting.

(10) Where the second line manager has—

- (a) reversed the finding of unsatisfactory performance or attendance and revoked the written improvement notice; or
- (b) varied any of the relevant terms of the written improvement notice,

the decision of the second line manager shall take effect by way of substitution for the finding, the written improvement notice issued or the relevant terms of the written improvement notice appealed against from the date of the first stage meeting.

## PART 4

### Second Stage

#### **Circumstances in which a second stage meeting may be required**

**19.—**(1) Where a member has received a written improvement notice, as soon as reasonably practicable after the date on which the period specified in accordance with regulation 14(6)(c) ends—

- (a) the line manager shall assess the performance or attendance of the member concerned during that period, in consultation with the second line manager or a human resources professional (or both); and
- (b) the line manager shall notify the member concerned in writing whether the line manager considers that there has been a sufficient improvement in performance or attendance during that period.

(2) If the line manager considers that there has not been a sufficient improvement in performance or that the required levels of attendance have not been maintained he shall, at the same time as he gives notification under paragraph (1)(b), also notify the member concerned in writing that he is

required to attend a meeting (in these Regulations referred to as a second stage meeting) to consider his performance or attendance.

(3) Where—

- (a) the member concerned has not been required to attend a second stage meeting under paragraph (2), or
- (b) the member concerned has been required to attend a second stage meeting under paragraph (2) but the second line manager did not make a finding of unsatisfactory performance or attendance at that meeting,

the member concerned may be required to attend a second stage meeting under paragraph (4).

(4) If the line manager considers that the member concerned has failed to maintain a sufficient improvement in his performance or attendance during any part of the validity period of the written improvement notice remaining after the expiry of the period specified in accordance with regulation 14(6)(c), he shall notify the member concerned in writing of the matters set out in paragraph (5).

(5) Those matters are—

- (a) that he is of the view mentioned in paragraph (4); and
- (b) that the member concerned is required to attend a meeting (in these Regulations referred to as a second stage meeting) to consider his performance or attendance.

(6) Any second stage meeting which a member is required to attend must concern unsatisfactory performance or attendance which is similar to or connected with the unsatisfactory performance or attendance referred to in the written improvement notice.

### **Arrangement of second stage meeting**

**20.**—(1) Where the line manager requires the member concerned to attend a second stage meeting, the second line manager shall as soon as reasonably practicable give a notice in writing to the member concerned—

- (a) referring to the requirement on the member concerned to attend a second stage meeting of the unsatisfactory performance procedures with the second line manager;
- (b) summarising the reasons why his performance or attendance is considered unsatisfactory;
- (c) informing him of the possible outcomes of a second stage meeting and a third stage meeting;
- (d) informing him that the line manager may attend the meeting;
- (e) informing him that a human resources professional or a police officer may attend the meeting to advise the second line manager on the proceedings;
- (f) informing him that, if he consents, any other person specified in the notice may attend the meeting;
- (g) informing him that he may seek advice from a representative of his staff association;
- (h) informing him that he may be accompanied and represented at the meeting by a police friend; and
- (i) informing him that he must provide to the second line manager in advance of the meeting a copy of any document he intends to rely on at the meeting.

(2) Such notice shall be accompanied by a copy of any document relied upon by the line manager when he formed the view referred to in regulation 19(2) or (4), as the case may be.

(3) The second line manager shall, if reasonably practicable, agree a date and time for the meeting with the member concerned.

(4) Where no date and time is agreed under paragraph (3), the second line manager shall specify a date and time for the meeting.

(5) The second line manager shall give to the member concerned a notice in writing of the date and time of the second stage meeting determined in accordance with paragraphs (3) and (4) and of the place of the meeting.

(6) In advance of the second stage meeting, the member concerned shall provide the second line manager with a copy of any document he intends to rely on at the meeting.

### **Procedure at second stage meeting**

**21.**—(1) The following provisions of this regulation shall apply to the procedure to be followed at the second stage meeting.

(2) The meeting shall be conducted by the second line manager and may be attended by the line manager.

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

(4) Any other person specified in the notice referred to in regulation 20(1) may attend the meeting if the member concerned consents to such attendance.

(5) The second line manager shall—

- (a) explain to the member concerned why he has been required to attend the meeting;
- (b) provide the member concerned with an opportunity to make representations in response;
- (c) provide his police friend (if he has one) with an opportunity to address the meeting in accordance with regulation 8(3)(a).

(6) If, after considering any representations made under paragraph (5)(b) or (c), the second line manager finds that the performance or attendance of the member concerned has been unsatisfactory during the period specified in accordance with regulation 14(6)(c) or during any part of the validity period of the written improvement notice remaining after the expiry of such period, he shall—

- (a) inform the member concerned in what respect his performance or attendance is considered unsatisfactory;
- (b) inform the member concerned of the improvement that is required in his performance or attendance;
- (c) inform the member concerned that, if a sufficient improvement is not made within such reasonable period as the second line manager shall specify (being a period not greater than 12 months), he may be required to attend a third stage meeting in accordance with regulation 26 and the second line manager shall specify the date on which this period ends;
- (d) inform the member concerned that he will receive a final written improvement notice; and
- (e) inform the member concerned that if the sufficient improvement referred to in sub-paragraph (c) is not maintained during any part of the validity period of such notice remaining after the expiry of the period specified in accordance with sub-paragraph (c), he may be required to attend a third stage meeting in accordance with regulation 26.

(7) The second line manager may, if he considers it appropriate, recommend that the member concerned seeks assistance in relation to any matter affecting his health or welfare.

(8) The second line manager may postpone or adjourn the meeting to a specified later time or date if it appears to him necessary or expedient to do so.

### **Procedure following second stage meeting**

**22.**—(1) The second line manager shall, as soon as reasonably practicable after the date of the conclusion of the second stage meeting—

- (a) cause to be prepared a written record of the meeting; and
- (b) where he made a finding at the meeting as set out in regulation 21(6), cause to be prepared a final written improvement notice.

(2) Where the member concerned has failed to attend a second stage meeting, if the second line manager makes a finding as set out in regulation 21(6), he shall as soon as reasonably practicable—

- (a) cause to be prepared a final written improvement notice; and
- (b) if the police friend of the member concerned attended the meeting, cause to be prepared a written record of the meeting.

(3) A final written improvement notice shall—

- (a) record the matters of which the member concerned was informed (or would have been informed had he attended the meeting) under sub-paragraphs (a) to (c) and (e) of regulation 21(6);
- (b) state the period for which it is valid; and
- (c) be signed and dated by the second line manager.

(4) A final written improvement notice shall be valid for a period of 12 months from the date of the notice (the “validity period”).

(5) The second line manager shall give a copy of any written record and any final written improvement notice to the member concerned as soon as reasonably practicable after they have been prepared.

(6) Where the second line manager made a finding as set out in regulation 21(6) and has caused to be prepared a final written improvement notice, he shall, at the same time as supplying the documents mentioned in paragraph (5), notify the member concerned in writing of the matters set out in regulation 23, of the name of the person to whom a written notice of appeal must be given under that regulation, of his entitlements under paragraphs (7) and (8) and of the effect of paragraph (9).

(7) Subject to paragraphs (8) and (9), the member concerned shall be entitled to submit written comments on the written record to the second line manager before the end of 7 working days beginning with the first working day after the day on which the copy is received by the member concerned.

(8) The second line manager may, on the application of the member concerned, extend the period specified in paragraph (7) if he is satisfied that it is appropriate to do so.

(9) The member concerned shall not be entitled to submit written comments on the written record if he has exercised his right to appeal under regulation 23.

(10) The second line manager shall ensure that any written record, any final written improvement notice and any written comments of the member concerned on the written record are retained together and filed.

### **Appeal against the finding and outcome of a second stage meeting**

**23.**—(1) This regulation applies where, at the second stage meeting, the second line manager found that the performance or attendance of the member concerned has been unsatisfactory as set out in regulation 21(6).

(2) Where this regulation applies, the member concerned may appeal against one or more of the following—

- (a) such finding;
  - (b) any of the matters specified in paragraph (3) and recorded in the final written improvement notice (in these Regulations referred to as the relevant terms of the final written improvement notice);
  - (c) the decision of the line manager to require the member concerned to attend the second stage meeting.
- (3) The matters specified in this paragraph are—
- (a) the respect in which the performance or attendance of the member concerned is considered unsatisfactory;
  - (b) the improvement that is required in his performance or attendance;
  - (c) the length of the period specified by the second line manager in accordance with regulation 21(6)(c).
- (4) The only grounds of appeal under this regulation are—
- (a) that, in relation to an appeal under paragraph (2)(c), the member concerned should not have been required to attend the second stage meeting as the meeting did not, in accordance with regulation 19(6), concern unsatisfactory performance or attendance which is similar to or connected with the unsatisfactory performance or attendance referred to in the written improvement notice;
  - (b) that the finding of unsatisfactory performance or attendance was unreasonable;
  - (c) that any of the relevant terms of the final written improvement notice are unreasonable;
  - (d) that there is evidence that could not reasonably have been considered at the second stage meeting which could have materially affected the finding of unsatisfactory performance or attendance or any of the relevant terms of the final written improvement notice;
  - (e) that there was a breach of the procedures set out in these Regulations or other unfairness which could have materially affected the finding of unsatisfactory performance or attendance or any of the relevant terms of the final written improvement notice.
- (5) An appeal shall be commenced by the member concerned giving written notice of appeal to the senior manager before the end of 7 working days beginning with the first working day after receipt of the documents referred to in regulation 22(5).
- (6) Such notice must—
- (a) set out the grounds of appeal of the member concerned; and
  - (b) be accompanied by any evidence on which the member concerned relies.
- (7) The senior manager may, on the application of the member concerned, extend the period specified in paragraph (5) if he is satisfied that it is appropriate to do so.
- (8) Subject to paragraph (9), the meeting at which the appeal will be heard (referred to in these Regulations as a second stage appeal meeting) shall take place before the end of 7 working days beginning with the first working day after the day on which the notification under paragraph (5) is received by the senior manager.
- (9) A second stage appeal meeting may take place after the period of 7 working days referred to in paragraph (8) if the senior manager considers it necessary or expedient, in which case he shall notify the member concerned of his reasons in writing.

#### **Arrangement of second stage appeal meeting**

**24.**—(1) As soon as reasonably practicable after receipt by the senior manager of the notice of appeal referred to in regulation 23(5), the senior manager shall give a notice in writing to the member concerned—

- (a) informing him of the procedures for determining the date and time of the meeting under paragraphs (2) and (3);
- (b) informing him that a human resources professional or a police officer may attend the meeting to advise the senior manager on the proceedings;
- (c) informing him that, if he consents, any other person specified in the notice may attend the meeting;
- (d) informing him that he may seek advice from a representative of his staff association; and
- (e) informing him that he may be accompanied and represented at the meeting by a police friend.

(2) The senior manager shall, if reasonably practicable, agree a date and time for the meeting with the member concerned.

(3) Where no date and time is agreed under paragraph (2), the senior manager shall specify a date and time for the meeting.

(4) The senior manager shall give to the member concerned a notice in writing of the date and time of the second stage appeal meeting determined in accordance with paragraphs (2) and (3) and of the place of the meeting.

#### **Procedure at second stage appeal meeting**

**25.—**(1) The following provisions of this regulation apply to the procedure to be followed at a second stage appeal meeting.

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

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

(4) Any other person specified in the notice referred to in regulation 24(1) may attend the meeting if the member concerned consents to such attendance.

(5) The senior manager shall—

- (a) provide the member concerned with an opportunity to make representations; and
- (b) provide his police friend (if he has one) with an opportunity to address the meeting in accordance with regulation 8(3)(a).

(6) After considering any representations made in accordance with paragraph (5), the senior manager may—

- (a) in an appeal under regulation 23(2)(c), make a finding that the member concerned should not have been required to attend the second stage meeting and reverse the finding made at that meeting;
- (b) confirm or reverse the finding of unsatisfactory performance or attendance made at the second stage meeting;
- (c) confirm or vary the relevant terms of the final written improvement notice appealed against.

(7) Where the senior manager has reversed the finding of unsatisfactory performance or attendance made at the second stage meeting, the senior manager shall also revoke the final written improvement notice.

(8) The senior manager may postpone or adjourn the meeting to a specified later time or date if it appears to him necessary or expedient to do so.

(9) As soon as is reasonably practicable after the conclusion of the meeting, the member concerned shall be given written notice of the senior manager's decision and a written summary of



the reasons for that decision but in any event, the member concerned shall be given written notice of the decision before the end of 3 working days beginning with the first working day after the conclusion of the meeting.

(10) Where the senior manager has—

- (a) reversed the finding made as set out in regulation 21(6) and revoked the final written improvement notice; or
- (b) varied any of the relevant terms of the final written improvement notice,

the decision of the senior manager shall take effect by way of substitution for the finding, the final written improvement notice issued or the relevant terms of the final written improvement notice appealed against from the date of the second stage meeting.

## PART 5

### Third Stage

#### **Assessment following second stage meeting**

**26.**—(1) Where a member has received a final written improvement notice, as soon as reasonably practicable after the date on which the period specified in accordance with regulation 21(6)(c) ends—

- (a) the line manager shall assess the performance or attendance of the member concerned during that period, in consultation with the second line manager or a human resources professional (or both); and
- (b) the line manager shall notify the member concerned in writing whether the line manager considers that there has been a sufficient improvement in performance or attendance during that period.

(2) If the line manager considers that there has not been a sufficient improvement in performance or that the required levels of attendance have not been maintained, he shall, at the same time as he gives notification under paragraph (1)(b), also notify the member concerned in writing that he is required to attend a meeting (in these Regulations referred to as a third stage meeting) to consider his performance or attendance.

(3) Where—

- (a) the member concerned has not been required to attend a third stage meeting under paragraph (2), or
- (b) the member concerned has been required to attend a third stage meeting under paragraph (2) but the panel did not make a finding of unsatisfactory performance or attendance at that meeting,

the member concerned may be required to attend a third stage meeting under paragraph (4).

(4) If the line manager considers that the member concerned has failed to maintain a sufficient improvement in his performance or attendance during any part of the validity period of the final written improvement notice remaining after the expiry of the period specified in accordance with regulation 21(6)(c), he shall notify the member concerned in writing of the matters set out in paragraph (5).

(5) Those matters are—

- (a) that he is of the view mentioned in paragraph (4); and
- (b) that the member concerned is required to attend a meeting (in these Regulations referred to as a third stage meeting) to consider his performance or attendance.

(6) Subject to regulation 28, any third stage meeting which a member is required to attend must concern unsatisfactory performance or attendance which is similar to or connected with the unsatisfactory performance or attendance referred to in the final written improvement notice.

#### **Arrangement of a third stage meeting**

**27.—**(1) Where the line manager requires the member concerned to attend a third stage meeting, the senior manager shall as soon as reasonably practicable give a notice in writing to the member concerned—

- (a) referring to the requirement on the member concerned to attend a third stage meeting of the unsatisfactory performance procedures with a panel appointed by the appropriate authority;
- (b) informing him of the procedures for determining the date and time of the meeting under regulation 34;
- (c) summarising the reasons why his performance or attendance is considered unsatisfactory;
- (d) informing him of the possible outcomes of the meeting;
- (e) informing him that a human resources professional and a police officer may attend the meeting to advise the panel on the proceedings;
- (f) informing him that counsel or a solicitor may attend the meeting to advise the panel on the proceedings and on any question of law that may arise at the meeting;
- (g) informing him that, if he consents, any other person specified in the notice may attend the meeting;
- (h) informing him of the effect of regulation 6;
- (i) informing him that he may seek advice from a representative of his staff association; and
- (j) informing him that he may be accompanied and represented at the meeting by a police friend.

(2) Such notice shall be accompanied by a copy of any document relied upon by the line manager when he formed the view referred to in regulation 26(2) or (4), as the case may be.

(3) A third stage meeting under this regulation shall not take place unless the member concerned has been notified of his rights under paragraph (1)(h), (i) and (j).

#### **Circumstances in which a third stage meeting may be required without a prior first or second stage meeting**

**28.—**(1) This regulation applies where the appropriate authority considers that the performance of a member constitutes gross incompetence.

(2) Where this regulation applies, the appropriate authority may inform the member concerned in writing that he is required to attend a meeting to consider his performance.

(3) Such meeting shall be referred to in these Regulations as a third stage meeting, notwithstanding that the member concerned has not attended a first stage meeting or a second stage meeting in respect of such performance.

#### **Arrangement of a third stage meeting without a prior first or second stage meeting**

**29.—**(1) Where the appropriate authority has informed the member concerned under regulation 28(2) that he is required to attend a third stage meeting, the appropriate authority shall as soon as reasonably practicable give to the member concerned a notice in writing—

- (a) referring to the requirement on the member concerned to attend a third stage meeting of the unsatisfactory performance procedures with a panel appointed by the appropriate authority;
  - (b) informing him of the procedures for determining the date and time of the meeting under regulation 34;
  - (c) summarising the reasons why his performance is considered to constitute gross incompetence;
  - (d) informing him of the possible outcomes of the meeting;
  - (e) informing him that a human resources professional and a police officer may attend the meeting to advise the panel on proceedings;
  - (f) informing him that counsel or a solicitor may attend the meeting to advise the panel on the proceedings and on any question of law that may arise at the meeting;
  - (g) informing him that, if he consents, any other person specified in the notice may attend the meeting;
  - (h) informing him of the effect of regulation 6;
  - (i) informing him that he may seek advice from a representative of his staff association; and
  - (j) informing him that he may be accompanied at the meeting by a police friend.
- (2) Such notice shall be accompanied by a copy of any document relied upon by the appropriate authority when it formed the view referred to in regulation 28(1).
- (3) A third stage meeting under this regulation shall not take place unless the member concerned has been notified of his rights under paragraph (1)(h), (i) and (j).

### **Appointment of panel members**

- 30.**—(1) The third stage meeting shall be conducted by a panel, which shall comprise a panel chair and two other members.
- (2) The panel shall be appointed by the appropriate authority.
  - (3) The panel chair shall be a senior officer or a senior human resources professional.
  - (4) One panel member shall be either a police officer or a human resources professional of at least the rank of superintendent or (in the opinion of the appropriate authority) equivalent.
  - (5) The other panel member shall be either a police officer or a police staff member of at least the rank of superintendent or (in the opinion of the appropriate authority) equivalent.
  - (6) At least two panel members shall be police officers.
  - (7) At least one panel member shall be a human resources professional.
  - (8) Each panel member shall be of at least the rank above that of the member concerned.
  - (9) No panel member shall be an interested party.
  - (10) As soon as reasonably practicable after the panel members have been appointed, the appropriate authority shall notify in writing the member concerned of their names.
  - (11) As soon as the appropriate authority has appointed the panel members, the appropriate authority shall arrange for a copy of any document—
    - (a) which was available to the line manager in relation to any first stage meeting;
    - (b) which was available to the second line manager in relation to any second stage meeting; or
    - (c) which was prepared or submitted under regulation 15, 18, 22, 25, 26, 27, 28 or 29 as the case may be,

to be made available to each panel member; and a copy of any such document shall be given to the member concerned.

(12) For the purposes of this regulation, a “senior human resources professional” means a human resources professional who, in the opinion of the appropriate authority, has sufficient seniority, skills and experience to be a panel chair.

### **Right of member concerned to object to panel members**

**31.**—(1) The member concerned may object to the appointment of any of the panel members.

(2) Any such objection must be made in writing to the appropriate authority before the end of 3 working days beginning with the first working day after receipt of the notification referred to in regulation 30(10) and must set out the grounds of objection of the member concerned.

(3) The appropriate authority shall notify the member concerned in writing whether it upholds or rejects an objection to any panel member.

(4) If the appropriate authority upholds an objection, the appropriate authority shall remove that member from the panel and shall appoint a new member to the panel.

(5) If the appropriate authority appoints a new panel member under paragraph (4), it must ensure that the requirements for the composition of the panel in regulation 30 continue to be met.

(6) As soon as reasonably practicable after any such appointment, the appropriate authority shall notify in writing the member concerned of the name of the new panel member.

### **Procedure on receipt of notice of third stage meeting**

**32.**—(1) Before the end of—

- (a) 20 working days beginning with the first working day after the date on which a notice has been given to the member concerned under regulation 27 or 29; or
- (b) where that period is extended by the panel chair for exceptional circumstances, such extended period,

the member concerned shall comply with paragraphs (2) and (3).

(2) The member concerned shall provide to the appropriate authority—

- (a) written notice of whether or not he accepts that his performance or attendance has been unsatisfactory or that he has been grossly incompetent, as the case may be;
- (b) where he accepts that his performance or attendance has been unsatisfactory or that he has been grossly incompetent, any written submission he wishes to make in mitigation;
- (c) where he does not accept that his performance or attendance has been unsatisfactory or that he has been grossly incompetent, or where he disputes all or part of the matters referred to in the notice given under regulation 27 or 29, written notice of—
  - (i) the matters he disputes and his account of the relevant events; and
  - (ii) any arguments on points of law he wishes to be considered by the panel.

(3) The member concerned shall provide the appropriate authority and the panel with a copy of any document he intends to rely on at the third stage meeting.

(4) Before the end of 3 working days beginning with the first working day after the date on which the member concerned has complied with paragraph (2), the senior manager and the member concerned shall each supply to the other a list of proposed witnesses or give notice that they do not have any proposed witnesses; and any list of proposed witnesses shall include brief details of the evidence that each witness is able to adduce.

(5) Where there are proposed witnesses, the member concerned shall, if reasonably practicable, agree a list of proposed witnesses with the senior manager.

(6) Where no list of proposed witnesses is agreed under paragraph (5), the member concerned shall supply to the appropriate authority his list of proposed witnesses.

### **Witnesses**

**33.**—(1) As soon as reasonably practicable after any list of proposed witnesses has been—

- (a) agreed under regulation 32(5); or
- (b) supplied under regulation 32(6),

the appropriate authority shall supply that list to the panel chair together, in the latter case, with a list of its proposed witnesses.

(2) The panel chair shall—

- (a) consider the list or lists of proposed witnesses; and
- (b) subject to paragraph (3), determine which, if any, witnesses should attend the third stage meeting.

(3) The panel chair may determine that witnesses not named in any list of proposed witnesses should attend the third stage meeting.

(4) No witness shall give evidence at a third stage meeting unless the panel chair reasonably believes that it is necessary in the interests of fairness for the witness to do so, in which case he shall—

- (a) where the witness is a member, cause that person to be ordered to attend the third stage meeting; and
- (b) in any other case, cause the witness to be given notice that his attendance is necessary and of the date, time and place of the meeting.

(5) Any question as to whether evidence is admissible, or whether any question should or should not be put to a witness, shall be determined by the panel chair.

(6) Nothing in this regulation shall require a meeting to be adjourned where a witness is unable to attend the meeting.

### **Timing and notice of third stage meeting**

**34.**—(1) Subject to paragraph (2) and regulation 36, the third stage meeting shall take place before the end of 30 working days beginning with the first working day after the day on which a notice has been given to the member concerned under regulation 27 or 29.

(2) The panel chair may extend the time period specified in paragraph (1) where he considers that it would be in the interests of fairness to do so.

(3) Where the panel chair extends the time period under paragraph (2), he shall provide written notification of his reasons for so doing to the appropriate authority and the member concerned.

(4) The panel chair shall, if reasonably practicable, agree a date and time for the third stage meeting with the member concerned.

(5) Where no date and time is agreed under paragraph (4), the panel chair shall specify a date and time for the third stage meeting.

(6) The panel chair shall give to the member concerned a notice in writing of the date and time of the third stage meeting determined in accordance with this regulation and of the place of the meeting.

(7) Where the member concerned informs the panel chair in advance that he is unable to attend the third stage meeting on grounds which the panel chair considers reasonable, the panel chair may allow the member concerned to participate in the meeting by video link or other means.

### **Postponement and adjournment of a third stage meeting**

**35.**—(1) If the panel chair considers it necessary or expedient, he may direct that the third stage meeting take place at a different time to that specified in the notice given under regulation 34.

(2) Such direction may specify a time which falls after the period of 30 working days referred to in regulation 34(1).

(3) Where the panel chair makes a direction under paragraph (1) he shall notify in writing the member concerned, the other panel members and the appropriate authority of his reasons and the revised time and place for the meeting.

### **Exclusion from a third stage meeting**

**36.**—(1) Where it appears to the panel chair that any person may, in giving evidence, disclose information which ought not to be disclosed to any person attending the meeting because it is information to which paragraph (2) applies, he shall require such attendees to withdraw while the evidence is given.

(2) This paragraph applies to information in so far as the panel chair considers that preventing disclosure of it is—

- (a) necessary for the purpose of preventing the premature or inappropriate disclosure of information that is relevant to, or may be used in, criminal proceedings;
- (b) necessary in the interests of national security;
- (c) necessary for the purpose of the prevention or detection of crime, or the apprehension or prosecution of offenders;
- (d) necessary for the purposes of the prevention or detection of misconduct by other police officers or police staff members;
- (e) necessary and proportionate for the protection of the welfare and safety of any informant or witness; or
- (f) otherwise in the public interest.

### **Procedure at a third stage meeting**

**37.**—(1) Subject to the provisions of this regulation, the procedure at the third stage meeting shall be such as the panel chair may determine.

(2) The third stage meeting shall be held in private.

(3) A human resources professional and a police officer may attend the meeting to advise the panel on the proceedings.

(4) Counsel or a solicitor may attend the meeting to advise the panel on the proceedings and on any question of law that may arise at the meeting.

(5) Any other person specified in the notice referred to in regulation 27(1)(g) or 29(1)(g) may attend the meeting if the member concerned consents to such attendance.

(6) Where the member concerned is required to attend a third stage meeting under regulation 26, the panel chair shall—

- (a) provide the member concerned with an opportunity to make representations in relation to the matters referred to in the notice given under regulation 27;

- (b) provide his police friend (if he has one) with an opportunity to address the meeting in relation to such matters in accordance with regulation 8(3)(a); and
  - (c) provide the person representing the member with an opportunity to address the meeting in relation to such matters in accordance with regulation 8(3)(a).
- (7) Where the member concerned is required to attend a third stage meeting under regulation 28, the panel chair shall—
- (a) provide the member concerned with an opportunity to make representations in relation to the matters referred to in the notice given under regulation 29;
  - (b) provide his police friend (if he has one) with an opportunity to address the meeting in relation to such matters in accordance with regulation 8(3)(a); and
  - (c) provide the person representing the member with an opportunity to address the meeting in relation to such matters in accordance with regulation 8(3)(a).
- (8) The panel chair may adjourn the meeting to a specified later time or date if it appears to him necessary or expedient to do so.
- (9) A verbatim record of the meeting shall be taken and the member concerned shall, on request, be supplied with a copy of such record.

### **Finding**

- 38.**—(1) Following the third stage meeting, the panel shall make a finding whether—
- (a) in a case falling within regulation 26(2), the performance or attendance of the member concerned during the period specified in accordance with regulation 21(6)(c) has been satisfactory or not;
  - (b) in a case falling within regulation 26(4), the performance or attendance of the member concerned during any part of the validity period of the final written improvement notice remaining after the expiry of the period specified in accordance with regulation 21(6)(c) has been satisfactory or not; or
  - (c) in a case falling within regulation 28, the performance of the member concerned constitutes gross incompetence, unsatisfactory performance or neither.
- (2) The panel shall prepare (or shall cause to be prepared) their decision in writing which shall state the finding and their reasons, as well as any outcome which they order under regulation 39.
- (3) As soon as reasonably practicable after the conclusion of the meeting, the panel chair shall give a written copy of the decision to—
- (a) the member concerned; and
  - (b) the line manager,
- but in any event, the member concerned shall be given written notice of the finding before the end of 3 working days beginning with the first working day after the conclusion of the meeting.
- (4) Where the panel have made a finding of unsatisfactory performance or attendance or gross incompetence, the copy of the decision given to the member concerned shall be accompanied by a notice in writing setting out the circumstances in which and the timeframe within which a member may submit a notice of appeal to a police appeals tribunal under the Police Appeals Tribunals Regulations (Northern Ireland) 2016(9).
- (5) Any finding or decision of the panel under this regulation or regulation 39 shall be based on a simple majority but shall not indicate whether it was taken unanimously or by a majority.

## Outcomes

39.—(1) If the panel make a finding that, in a case falling within regulation 26(2) or (4), the performance or attendance of the member concerned has been unsatisfactory they may, subject to paragraph (4), order—

- (a) one of the outcomes mentioned in paragraph (3)(a), (c) or (f); or
- (b) where the panel are satisfied that there are exceptional circumstances which justify it, the outcome mentioned in paragraph (3)(d).

(2) If the panel make a finding that, in a case falling within regulation 28, the performance of the member concerned constitutes gross incompetence, they may order one of the outcomes mentioned in paragraph (3)(b), (c), (e) or (f).

(3) The outcomes mentioned in this paragraph are:

- (a) dismissal of the member concerned with notice, the period of such notice to be decided by the panel, subject to a minimum period of 28 days;
- (b) dismissal of the member concerned with immediate effect;
- (c) reduction in rank of the member concerned with immediate effect;
- (d) an extension of the final written improvement notice;
- (e) the issue of a final written improvement notice;
- (f) redeployment to alternative duties (which may involve a reduction in rank).

(4) The panel may not order the outcome mentioned in paragraph (3)(c) where the third stage meeting relates to the attendance of the member concerned.

(5) Where the question of ordering any of the outcomes mentioned in paragraph (3) is being considered, the panel—

- (a) shall have regard to the record of police service of the member concerned as shown on his personal record;
- (b) may receive evidence from any witness whose evidence would, in their opinion, assist them in determining the question; and
- (c) shall give—
  - (i) the member concerned, his police friend or his counsel or solicitor; and
  - (ii) the appropriate authority;

an opportunity to make oral or written representations before any such question is determined.

(6) If the panel make a finding, in a case falling within regulation 28, of unsatisfactory performance, they shall order the issue of a written improvement notice.

(7) A written improvement notice or a final written improvement notice issued under this regulation shall—

- (a) state in what respect the performance or attendance of the member concerned (as the case may be) is considered unsatisfactory or grossly incompetent;
- (b) state the improvement that is required in his performance or attendance;
- (c) state that, if a sufficient improvement is not made within such reasonable period as the panel shall specify (being a period not greater than 12 months), the member concerned may be required to attend a second stage meeting (in the case of a written improvement notice) or another third stage meeting (in the case of a final written improvement notice) and state the date on which this period ends;
- (d) state that it shall be valid for a period of 12 months from the date of the notice (the “validity period”);



- (e) state that, if the sufficient improvement referred to in sub-paragraph (c) is not maintained during any part of the validity period remaining after the expiry of the period specified in accordance with sub-paragraph (c), he may be required to attend a second stage meeting (in the case of a written improvement notice) or another third stage meeting (in the case of a final written improvement notice); and
  - (f) be signed and dated by the panel chair.
- (8) Where the panel orders an extension of the final written improvement notice—
- (a) the notice shall be amended—
    - (i) to state that if the member concerned does not make a sufficient improvement within such reasonable period as the panel shall specify (being a period not greater than 12 months) he may be required to attend another third stage meeting; and
    - (ii) to state the date on which this period ends;
  - (b) the panel may vary any of the other matters recorded in the notice;
  - (c) the notice shall be valid for a further period of 12 months from the date of the extension (the “validity period”) and shall state the date on which it expires.

#### **Assessment of performance or attendance following third stage meeting**

**40.**—(1) This regulation applies where a written improvement notice has been issued under regulation 39.

(2) Where this regulation applies, the performance of the member concerned shall be assessed under regulation 19 as if he had received a written improvement notice under regulation 15.

(3) Where, as a result of such assessment, the member concerned is required to attend a second stage meeting, these Regulations shall have effect as if he had been required to attend that meeting under regulation 19; and—

- (a) references to the period specified in accordance with regulation 14(6)(c) shall be construed as references to the period specified under regulation 39(7)(c); and
- (b) references to the validity period of the written improvement notice shall be construed as references to the validity period of the written improvement notice issued under regulation 39.

(4) Where a member is required to attend such a second stage meeting, that meeting must concern unsatisfactory performance which is similar to or connected with the unsatisfactory performance referred to in the written improvement notice.

**41.**—(1) This regulation applies where a final written improvement notice has been issued or extended under regulation 39.

(2) Where this regulation applies, as soon as reasonably practicable after the reasonable period specified by the panel under regulation 39(7)(c) or (8)(a) ends—

- (a) the panel shall assess the performance or attendance of the member concerned (as the case may be) during that period; and
- (b) the panel chair shall notify the member concerned in writing whether the panel considers that there has been a sufficient improvement in performance or attendance during that period.

(3) If the panel considers that there has not been a sufficient improvement, the panel chair shall, at the same time as he gives notification under paragraph (2)(b), also notify the member concerned in writing that he is required to attend another third stage meeting to consider his performance or attendance.

(4) Where—

- (a) the member concerned has not been required to attend a third stage meeting under paragraph (3), or
- (b) the member concerned has been required to attend a third stage meeting under paragraph (3) but the panel did not make a finding of unsatisfactory performance or attendance at that meeting,

the member concerned may be required to attend a third stage meeting under paragraph (5).

(5) If the panel considers that the member concerned has failed to maintain a sufficient improvement in his performance or attendance during any part of the validity period of the final written improvement notice remaining after the expiry of the period specified in accordance with regulation 39(7)(c) or (8)(a), the panel chair shall notify the member concerned in writing of the matters set out in paragraph (6).

(6) Those matters are—

- (a) that the panel is of the view mentioned in paragraph (5); and
- (b) that the member concerned is required to attend another third stage meeting to consider his performance or attendance.

(7) In a case falling within paragraph (3) or (5), the appropriate authority shall give the member concerned the notice referred to in regulation 27.

(8) Where the member concerned is required to attend a third stage meeting under this regulation, these Regulations shall have effect as if the case fell within regulation 26(2) or (4) as the case may be and—

- (a) references to the period specified in accordance with regulation 21(6)(c) shall be construed as references to the period specified under regulation 39(7)(c) or (8)(a), as the case may be; and
- (b) references to the validity period of the final written improvement notice shall be construed as references to the validity period mentioned in regulation 39(7)(d) or (8)(c), as the case may be.

(9) Any third stage meeting which a member is required to attend under this regulation must concern unsatisfactory performance or attendance which is similar to or connected with the unsatisfactory performance or attendance referred to in the final written improvement notice issued or extended under regulation 39.

(10) References in this regulation to the panel are references to the panel that conducted the initial third stage meeting, subject to paragraph (11).

(11) Where any of the panel members are not able to continue to act as such, the appropriate authority shall remove that member from the panel and shall appoint a new member to the panel.

(12) If the appropriate authority appoints a new panel member under paragraph (11), it must ensure that the requirements for the composition of the panel in regulation 30 continue to be met.

(13) As soon as reasonably practicable after any such appointment, the appropriate authority shall notify in writing the member concerned of the name of the new panel member.

(14) The member concerned may object to the appointment of a panel member appointed under paragraph (11).

(15) Any such objection must be made in accordance with regulation 31(2), provided that it must be made before the end of 3 working days beginning with the first working day after receipt of the notification referred to in paragraph (13); and the appropriate authority shall comply with regulation 31(3) to (6) in relation to the objection.

**42.—**(1) Where a member is required to attend another third stage meeting under regulation 41—

- (a) that meeting shall be conducted by the same panel as conducted the initial third stage meeting (subject to any change in that panel under regulation 41);
  - (b) the member concerned shall not have the right to object to panel members under regulation 31, except in accordance with regulation 41;
  - (c) subject to paragraph (2), regulations 32 to 39 shall apply to, or in relation to, that meeting.
- (2) Following that third stage meeting, the panel may not order the outcome mentioned in regulation 39(3)(d).

Sealed with the Official Seal of the Department of Justice on 17th February 2016



*David Ford*  
Minister of Justice