
STATUTORY RULES OF NORTHERN IRELAND

2016 No. 42

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

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(1).
- (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).