
SCOTTISH STATUTORY INSTRUMENTS

2013 No. 61

POLICE

The Police Service of Scotland (Performance) Regulations 2013

Made - - - - 21st February 2013
Laid before the Scottish
Parliament - - - - 25th February 2013
Coming into force - - 1st April 2013

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

In accordance with section 54(2) of that Act, the Scottish Ministers have consulted and shared a draft of the Regulations with the persons mentioned in section 54(2)(a)(i) to (vi) and have considered any representations made.

PART 1

General

Citation and commencement

1. These Regulations may be cited as the Police Service of Scotland (Performance) Regulations 2013 and come into force on 1st April 2013.

Interpretation

2. In these Regulations—

“the 1996 Regulations” means the Police (Efficiency) (Scotland) Regulations 1996⁽²⁾;

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

“appellant” means a constable making an appeal under regulation 20;

“chairing constable” means the individual appointed under regulation 15(1);

“countersigning officer” means a constable who is of a higher rank than the reporting officer appointed for the purposes of any proceedings under these Regulations;

(1) 2012 asp 8.

(2) S.I. 1996/1643.

“first interview” means the interview arranged under regulation 6;

“inefficiency hearing” means (unless the context otherwise requires) the hearing arranged under regulation 14;

“interviewing officer” means (unless the context otherwise requires) the individual appointed under regulation 6 to conduct the first interview;

“personnel officer” means a member of the police staff or a constable who, in either case, has been assigned functions in relation to proceedings under these Regulations;

“police force” means a police force maintained, before 1st April 2013, under the Police (Scotland) Act 1967(3);

“reporting officer” means (unless the context otherwise requires) a constable of a rank not lower than sergeant who has immediate supervisory responsibility for the constable in respect of whom proceedings under these Regulations are taken;

“senior manager” means—

- (a) the individual who is, for the time being—
 - (i) supervising the individual who is the countersigning officer; or
 - (ii) the local commander of the division to which the constable is assigned; or
- (b) where the countersigning officer mentioned in paragraph (a)(i) is of the same rank as the local commander of the division to which the constable is assigned, that local commander;

“second interview” means the interview arranged under regulation 10;

“the constable” means (unless the context otherwise requires) a constable to whom these Regulations apply and in respect of whom proceedings under these Regulations are taken; and

“transferred constable” means an individual who—

- (a) before 1st April 2013 was serving as a constable of a police force (excluding any such individual who was, immediately before that date, engaged on relevant service within the meaning given by section 38A(1) of the Police (Scotland) Act 1967);
- (b) is transferred to the Police Service under paragraph 6 of schedule 5 to the Act; and
- (c) is not a special constable.

Application

3.—(1) With the exception of Part 6 (senior officer performance), these Regulations apply only in relation to the performance of constables below the rank of assistant chief constable who have completed their period of probation.

(2) These Regulations do not apply to—

- (a) constables on temporary service outwith the Police Service (either under arrangements made under section 15 of the Act or by virtue of paragraph 8(4) of schedule 5 to the Act);
- (b) individuals engaged on temporary service as a constable of the Police Service (either under arrangements made under section 16 of the Act or by virtue of paragraph 8(2) of schedule 5 to the Act); or
- (c) special constables.

Designation of deputy chief constable

4. The chief constable must designate a deputy chief constable to carry out functions under these Regulations (and references in these Regulations to “the deputy chief constable” are, unless the context otherwise requires, references to that individual).

PART 2

First interview

Circumstances in which first interview may be required

5. Where the constable’s reporting officer considers that the constable’s performance is unsatisfactory, that officer may require the constable to attend a first interview to discuss the constable’s performance.

Arrangement of first interview

6.—(1) Where the reporting officer decides to require the constable to attend a first interview, the reporting officer must—

- (a) send a notice in writing to the constable—
 - (i) requiring the constable to attend, at a specified time and place, an interview with the interviewing officer;
 - (ii) stating the reasons why the interview is required; and
 - (iii) informing the constable of the right to be accompanied at the interview by another constable selected by the constable; and
- (b) send a copy of the notice to the countersigning officer.

(2) Subject to paragraphs (3) and (4), the interviewing officer is to be the reporting officer.

(3) The constable may, not later than 7 days (or such longer period as the reporting officer may specify) after the date on which the notice under paragraph (1) was sent, request by notice in writing to the reporting officer that the interview be conducted by the countersigning officer.

(4) If the reporting officer receives a notification mentioned in paragraph (3), the reporting officer must—

- (a) where it is reasonably practicable for the countersigning officer to conduct the interview, arrange for the interview to be conducted by that person; or
- (b) where it is not reasonably practicable for the countersigning officer to conduct the interview, arrange for another constable of the same rank as, or a higher rank than, the countersigning officer to conduct the interview.

Procedure at first interview

7.—(1) At the first interview, the interviewing officer must—

- (a) explain why the reporting officer is of the opinion that the constable’s performance is unsatisfactory; and
- (b) give the constable an opportunity to make representations in response.

(2) If, after considering any representations made by the constable, the interviewing officer is satisfied that the constable’s performance has been satisfactory, the interviewing officer must inform the constable that no further action is to be taken under these Regulations.

(3) If, after considering any representations made by the constable, the interviewing officer is satisfied that the constable's performance has been unsatisfactory, the interviewing officer must give the constable a warning, informing the constable—

- (a) as to the respect in which the constable's performance is considered to be unsatisfactory;
- (b) that an improvement in performance is required;
- (c) of any specific action required to achieve that improvement; and
- (d) that, if a sufficient improvement is not made within the period specified by the interviewing officer, the constable may be required to attend a second interview in accordance with regulation 9.

(4) The interviewing officer may, if it is considered appropriate, recommend that the constable seek assistance in relation to any matter affecting the constable's health or welfare.

(5) The interviewing officer may adjourn the first interview to a specified later time or date if it appears necessary or expedient to do so.

Procedure following first interview

8.—(1) Not later than 7 days after the date of the conclusion of the first interview, the interviewing officer must—

- (a) prepare a written record of the interview;
- (b) send to the constable—
 - (i) a copy of that record; and
 - (ii) confirmation of the terms of any warning given under regulation 7(3); and
- (c) inform the constable that the constable may submit to the interviewing officer written comments on the record of the meeting or on the terms of the warning (or both) not later than 7 days after the date on which they were sent.

(2) The interviewing officer may, on the application of the constable, extend the period specified in paragraph (1)(c) if it is considered appropriate to do so.

(3) The interviewing officer must send a copy of the record of the interview and any comments received from the constable to—

- (a) the senior manager;
- (b) a personnel officer;
- (c) if the interview was conducted by the reporting officer, the countersigning officer;
- (d) if the interview was conducted by the countersigning officer, the reporting officer; and
- (e) if the interview was conducted by any other constable, the reporting officer and the countersigning officer.

PART 3

Second interview

Circumstances in which second interview may be required

9. Where the reporting officer considers that the performance of a constable who was warned in accordance with regulation 7(3) has not improved sufficiently by the end of the period specified, the reporting officer may, with the agreement of the countersigning officer, require the constable to attend a second interview to discuss the constable's performance.

Arrangement of second interview

10. Where the reporting officer decides (with the agreement of the countersigning officer) to require the constable to attend a second interview, the reporting officer must—

- (a) send a notice in writing to the constable—
 - (i) requiring the constable to attend, at a specified time and place, an interview with the senior manager and a personnel officer;
 - (ii) stating the reasons why the interview is required; and
 - (iii) informing the constable of the right to be accompanied at the interview by another constable selected by the constable; and
- (b) send a copy of the notice to the countersigning officer, the senior manager and a personnel officer.

Procedure at second interview

- 11.—(1) The second interview is to be conducted by the senior manager and a personnel officer.
- (2) At the second interview, the senior manager must—
- (a) explain why the reporting officer and the countersigning officer are of the opinion that the constable has failed to make a sufficient improvement in performance; and
 - (b) give the constable an opportunity to make representations in response.
- (3) If, after considering any representations made by the constable, the senior manager is satisfied that the constable's performance has been satisfactory, the senior manager must inform the constable that no further action is to be taken under these Regulations.
- (4) If, after considering any representations made by the constable, the senior manager is satisfied that the constable's performance has been unsatisfactory during the period specified by the interviewing officer in pursuance of regulation 7(3)(d), the senior manager must give the constable a warning, informing the constable—
- (a) as to the respect in which the constable's performance is considered unsatisfactory;
 - (b) that an improvement in performance is required;
 - (c) of any specific action required to achieve that improvement; and
 - (d) that if a sufficient improvement is not made within the period specified by the senior manager, the constable may be required to attend an inefficiency hearing in accordance with regulation 13(1)(c).
- (5) The senior manager may, if it is considered appropriate, recommend that the constable seek assistance in relation to any matter affecting the constable's health or welfare.
- (6) Where the constable is given a warning under paragraph (4), the constable must be informed that the chairing constable of an inefficiency hearing will have the power, if appropriate, to require the constable to resign from the Police Service or order a demotion in rank.
- (7) The senior manager may adjourn the second interview to a specified later time or date if it appears necessary or expedient to the senior manager to do so.

Procedure following second interview

12.—(1) Not later than 7 days after the date of the conclusion of the second interview, the senior manager must—

- (a) prepare, in consultation with the personnel officer, a written record of the interview;
- (b) send to the constable—

- (i) a copy of that record; and
 - (ii) confirmation of the terms of any warning given under regulation 11(4); and
 - (c) inform the constable that the constable may submit to the senior manager written comments on the record of the meeting or on the terms of the warning (or both) not later than 7 days after the date on which they were sent.
- (2) The senior manager may, on the application of the constable, extend the period specified in paragraph (1)(c) if it is considered appropriate to do so.
- (3) The senior manager must—
- (a) retain with the record of the interview any written comments received on that record or on the terms of the warning; and
 - (b) send to the countersigning officer a copy of the record of the interview and any written comments on that record or on the terms of the warning.

PART 4

Inefficiency hearing

Assessment of performance following second interview

- 13.**—(1) Not later than 14 days after the end of the period specified in pursuance of regulation 11(4)(d)—
- (a) the reporting officer and the countersigning officer must assess the constable's performance during that specified period;
 - (b) the constable must be informed in writing as to whether the reporting officer and the countersigning officer are of the opinion that there has been a sufficient improvement in the constable's performance during that period; and
 - (c) where the reporting officer and the countersigning officer are of the opinion that there has been an insufficient improvement in the constable's performance, the constable must be notified of the requirement to attend, at a date and time to be specified, an inefficiency hearing to consider the constable's performance.
- (2) A notification given in pursuance of paragraph (1)(c) must inform the constable that the inefficiency hearing will take place not less than 21 days and not more than 42 days from the date of the notification.

Arrangement of inefficiency hearing

- 14.** Not less than 21 days before the date fixed for an inefficiency hearing, a written notice must be sent by the countersigning officer to the constable—
- (a) requiring the constable to attend the inefficiency hearing at a specified date, time and place;
 - (b) stating the reasons why the hearing is required;
 - (c) informing the constable that the constable may be represented—
 - (i) either by an advocate or a solicitor; or
 - (ii) by another constable selected by the constable; and
 - (d) informing the constable of the disposals available to the chairing constable of the inefficiency hearing by virtue of regulation 18.

Procedure at inefficiency hearing

15.—(1) The deputy chief constable must appoint a constable of at least the rank of superintendent to act as the chairing constable at the inefficiency hearing.

(2) The chairing constable must be a person who has neither attended nor otherwise been involved with the first interview or the second interview.

(3) The chairing constable may appoint to assist the chairing constable at the inefficiency hearing—

- (a) up to two other constables as assessors; and
- (b) an advocate or a solicitor as a legal assessor.

(4) As soon as reasonably practicable after the appointment of the chairing constable, the deputy chief constable must arrange to be made available to the chairing constable any document which was—

- (a) available to the interviewing officer in relation to the first interview;
- (b) available to the senior manager in relation to the second interview; and
- (c) prepared or submitted under regulations 12, 13 or 14.

(5) Subject to the following provisions of this regulation, the procedure at the inefficiency hearing is to be determined by the chairing constable.

(6) The inefficiency hearing is to be held in private.

(7) The chairing constable must give the constable the opportunity to make representations in relation to the matters mentioned in the notice sent under regulation 14.

(8) The chairing constable must prepare a written note summarising the proceedings at the inefficiency hearing.

(9) Subject to regulation 16, if the constable fails to attend the inefficiency hearing—

- (a) where the chairing constable considers it just and appropriate to do so, the hearing may be proceeded with and concluded in the constable's absence; and
- (b) any part of the procedure described in these Regulations which cannot be complied with in the constable's absence may be treated as if it had been complied with.

Postponement or adjournment of inefficiency hearing

16.—(1) Paragraph (2) applies where the constable—

- (a) intimates to the chairing constable that the constable will be unable to attend the inefficiency hearing; or
- (b) in the absence of such intimation, fails to attend the inefficiency hearing.

(2) Where this paragraph applies, the chairing constable may, if satisfied that there is a good reason for the non-attendance of the constable—

- (a) postpone the hearing in the circumstances mentioned in paragraph (1)(a); or
- (b) adjourn the hearing in the circumstances mentioned in paragraph (1)(b).

(3) The chairing constable may adjourn the inefficiency hearing if, having considered any representations made by the constable, the chairing constable considers it appropriate to allow a further period for the assessment of the constable's performance.

(4) Where an adjournment is made for the purpose mentioned in paragraph (3), the chairing constable must—

- (a) specify a period, not exceeding 3 months, during which the reporting officer and the countersigning officer are to further assess the constable's performance;

- (b) fix a date on which the inefficiency hearing will continue; and
 - (c) require the constable to attend on that date at a specified time and place.
- (5) Not later than 14 days from the date on which the period for further assessment specified under paragraph (4)(a) ends—
- (a) the reporting officer and countersigning officer must prepare a report containing their assessment of the constable's performance during that period; and
 - (b) the countersigning officer must—
 - (i) send that report to the chairing constable; and
 - (ii) send a copy of that report to the constable.
- (6) At the continuation of the inefficiency hearing the chairing constable must give the constable the opportunity to make representations in relation to the report mentioned in paragraph (5).
- (7) Paragraphs (8) and (9) apply if, at the time the report mentioned in paragraph (5) is sent to the chairing constable—
- (a) that constable is absent, incapacitated or suspended from duty; and
 - (b) it is likely that such absence, incapacity or suspension will continue for a period of more than 28 days from the date report is sent.
- (8) Where this paragraph applies, the deputy chief constable must appoint another constable to act as the chairing constable at the continued inefficiency hearing (and the references in paragraph (6) and regulations 17 to 22 are to be read as including any constable so appointed).
- (9) A constable appointed under paragraph (8) must be a constable who would have been eligible for appointment as chairing constable of the inefficiency hearing by virtue of regulation 15(1) and (2).

Determination

- 17.—(1) At the conclusion of the inefficiency hearing, the chairing constable must determine whether the constable's performance has been satisfactory—
- (a) during the period specified under regulation 11(4)(d); or
 - (b) where the hearing was adjourned under regulation 16(3), during the period comprising—
 - (i) the period specified under regulation 11(4)(d); and
 - (ii) the period specified under regulation 16(4)(a).
- (2) Where it is considered necessary to do so, the chairing constable may defer the determination under paragraph (1) to a later time or date.
- (3) The chairing constable's determination must be recorded in writing and must, in a case where the constable's performance has been determined to be unsatisfactory, state—
- (a) the reasons for that determination; and
 - (b) any disposal ordered in accordance with regulation 18.
- (4) The chairing constable's written determination must, as soon as reasonably practicable, be sent to—
- (a) the constable;
 - (b) the deputy chief constable; and
 - (c) a personnel officer.

Disposals

18.—(1) Where the chairing constable determines that the constable's performance has been unsatisfactory during the period mentioned in regulation 17(1)(a) or, as the case may be, (b), the chairing constable may—

- (a) require the constable to resign at a specified date;
- (b) order the constable's demotion in rank; or
- (c) issue a written warning to the constable stating that—
 - (i) the constable's performance is required to improve within a specified period; and
 - (ii) if, after consideration of the constable's performance during that specified period in accordance with regulation 19, it is found that the constable's performance has not improved sufficiently, the chairing constable may require the constable to resign.

(2) Where a disposal under paragraph (1)(a) is ordered and the constable fails to resign by the specified date, the constable is to be treated as having been dismissed from that date.

Assessment of performance following inefficiency hearing

19.—(1) This regulation applies where the constable has been given a written warning under regulation 18(1)(c).

(2) Not later than 14 days after the end of the period specified in the warning, the reporting officer and the countersigning officer must—

- (a) assess the constable's performance during that period;
- (b) prepare a report on the constable's performance;
- (c) submit that report to the chairing constable;
- (d) send a copy of that report to the constable; and
- (e) inform the constable that written comments on the report may be submitted to the chairing constable not later than 7 days after the date on which the copy of that report was sent to the constable.

(3) The chairing constable must—

- (a) consider the report and any written comments made by or on behalf of the constable; and
- (b) if satisfied—
 - (i) that there has been an insufficient improvement in the constable's performance, require the constable to resign within the period of 1 month beginning with the date on which notification of that requirement is made; or
 - (ii) that there has been a sufficient improvement in the constable's performance, record that decision and direct that no further proceedings are to be taken under these Regulations.

(4) The chairing constable must record in writing the determination made under this regulation (including the reasons for that determination) and, as soon as is reasonably practicable, send a copy to—

- (a) the constable;
- (b) the deputy chief constable;
- (c) a personnel officer;
- (d) the countersigning officer; and
- (e) the reporting officer.

(5) Where the chairing constable requires the constable to resign under paragraph (3)(b)(i) and the constable has not resigned by the end of the period of 1 month beginning with the date of the notification of that requirement, the constable is to be treated as having been dismissed with effect from the day after the end of that period.

(6) Paragraphs (7) and (8) apply if, at the time the report is sent to the chairing constable in pursuance of paragraph (2)(c)—

- (a) that constable is absent, incapacitated or suspended from duty; and
- (b) it is likely that such absence, incapacity or suspension will continue for a period of more than 28 days from the date the report is sent.

(7) Where this paragraph applies, the deputy chief constable must appoint another constable to act as the chairing constable under this regulation (and the references in regulations 20 to 22 to “the chairing constable” are to be read as including any constable so appointed).

(8) A constable appointed under paragraph (7) must be a constable who would have been eligible for appointment as chairing constable of the inefficiency hearing by virtue of regulation 15(1) and (2).

PART 5

Appeal to the chief constable

Appeal to the chief constable

20.—(1) Where a determination has been made by the chairing constable that the constable’s performance has been unsatisfactory, the constable may appeal to the chief constable against—

- (a) that determination and the disposal ordered; or
- (b) the disposal only.

(2) Where the constable has been required to resign under regulation 19(3)(b)(i), the constable may appeal to the chief constable against that requirement.

(3) An appeal under paragraph (1) or (2) is to be made by the appellant submitting to the chief constable, not later than 28 days after the date on which a determination was sent to the constable in pursuance of regulation 17(4) or, as the case may be, 19(4), a written notice of appeal specifying—

- (a) the name and address of the appellant;
- (b) that the notice is a notice of appeal;
- (c) the date of the determination and disposal or, in the case of an appeal under paragraph (2), the date of the requirement to resign; and
- (d) the grounds upon which the appeal is made.

(4) The appellant must sign the notice of appeal and send with it a copy of the written determination against which the appeal is made.

(5) A notice of appeal may be submitted late and such a notice may include—

- (a) a request for the notice to be accepted late; and
- (b) a statement of the reasons why it was not submitted on time.

(6) The chief constable may accept a late notice of appeal if satisfied that there are special circumstances which justify the appeal being submitted late.

Appeal procedure

21.—(1) Where the chief constable considers it necessary for the purpose of determining the appeal, the chief constable may fix an appeal hearing for the purpose of affording the opportunity of making oral representations to—

- (a) the appellant; and
- (b) the chairing constable.

(2) Where the chief constable fixes an appeal hearing, the chief constable must give reasonable notice of the date, time and place at which that hearing is to take place.

(3) The chief constable may appoint to assist the chief constable at the appeal meeting—

- (a) up to two other constables as assessors; and
- (b) an advocate or a solicitor as a legal assessor.

(4) At an appeal hearing—

- (a) each of the appellant and the chairing constable may be represented by—
 - (i) another constable;
 - (ii) an advocate; or
 - (iii) a solicitor; and
- (b) the chief constable (or any individual representing the chief constable) may put questions to the appellant and the chairing constable (or to any individual representing them).

(5) The chief constable may, where it appears necessary or expedient to the chief constable to do so, adjourn the appeal hearing and request the chairing constable to—

- (a) provide further information relating to any matter arising from the chief constable's consideration of the papers; or
- (b) hold a further hearing in relation to those matters.

(6) Where the chief constable requests the chairing constable to hold a further hearing under paragraph (5)(b), the provisions of regulation 14 (except paragraph (d)), 15 (except paragraphs (1), (2) and (4)) and 16(1) and (2) apply to the hearing as they apply to an inefficiency hearing.

(7) The chief constable must not have regard to any information obtained by virtue of paragraph (5) unless—

- (a) that information was available to the constable at the time of the inefficiency hearing; or
- (b) the constable has been given an opportunity to make representations in relation to that information.

Determination of appeal

22.—(1) The chief constable must determine the appeal on the basis of—

- (a) the written record of the chairing constable's determination made in pursuance of regulation 17(3) and any papers referred to in that determination;
- (b) in the case of an appeal under regulation 20(2)—
 - (i) the report prepared under regulation 19(2)(b);
 - (ii) any comments on that report submitted by the constable (or any person representing the constable); and
 - (iii) the written record of the chairing constable's determination made in pursuance of regulation 19(4);
- (c) the notice of appeal;

- (d) any representations made by the constable at the appeal hearing; and
 - (e) any further information obtained following an adjournment of that hearing under regulation 21(5).
- (2) The chief constable must—
- (a) where it is reasonably practicable to do so, determine the appeal not later than—
 - (i) where no appeal hearing has been arranged, 7 days after the date on which the chief constable receives the notice of appeal; or
 - (ii) where an appeal hearing has been held, 7 days after the date of that hearing; or
 - (b) where it is not reasonably practicable to determine the appeal in accordance with sub-paragraph (a), determine the appeal not later than—
 - (i) 28 days after the date on which the notice of appeal was sent; or
 - (ii) where the chairing constable has held a further hearing in pursuance of regulation 21(5), 7 days after the completion of that hearing.
- (3) In determining an appeal under regulation 20(1), the chief constable may—
- (a) if the appeal was made under sub-paragraph (a)—
 - (i) reverse the chairing constable's determination that the constable's performance has been unsatisfactory; or
 - (ii) vary the disposal;
 - (b) if the appeal was made under sub-paragraph (b), vary the disposal; or
 - (c) in either case, dismiss the appeal.
- (4) Any variation by the chief constable of a disposal ordered by the chairing constable must not have the effect of ordering a disposal which is more severe than that ordered by the chairing constable.
- (5) In determining an appeal under regulation 20(2), the chief constable must—
- (a) confirm or quash the requirement to resign; and
 - (b) where the requirement to resign is quashed, substitute a disposal mentioned in regulation 18(1)(b) or (c).
- (6) The chief constable's determination is to be recorded in a notice—
- (a) specifying the terms of the chief constable's determination, including any variation of a disposal ordered by the chairing constable;
 - (b) giving reasons for that determination; and
 - (c) signed and dated by the chief constable.
- (7) The chief constable must send a copy of the notice mentioned in paragraph (6) to—
- (a) the appellant;
 - (b) the appellant's representative (if any); and
 - (c) the chairing constable.

PART 6

Senior Officer Performance

Senior officer performance

- 23.** The Authority must establish and maintain—
- (a) standards of performance for senior officers;
 - (b) procedures for the assessment of senior officers' compliance with those standards; and
 - (c) procedures for the determination by the Authority of any case in which a senior officer's compliance with those standards is in question.

PART 7

Revocation, savings and transitional provisions

Revocation, savings and transitional provisions

- 24.** The Schedule (revocation, savings and transitional provisions) has effect.

St Andrew's House,
Edinburgh
21st February 2013

KENNY MACASKILL
A member of the Scottish Government

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

SCHEDULE

Regulation 24

Revocation, savings and transitional provisions

Interpretation

1. In this Schedule “inefficiency hearing”, “interviewing officer” and “senior officer” each have the meanings given by regulation 2 of the 1996 Regulations.

Revocation, savings and transitional provisions

2. Subject to paragraph 3, the 1996 Regulations are revoked.

3.—(1) Despite their revocation by paragraph 2, the 1996 Regulations continue to have effect on and after 1st April 2013 as they had effect immediately before that date, with the modifications set out in paragraph 10, where—

- (a) unsatisfactory performance by an individual to whom those Regulations applied (by virtue of regulation 3 of those Regulations) came to the attention of that individual’s reporting officer before 1st April 2013;
- (b) proceedings under those Regulations in relation to that individual’s performance were not concluded before that date; and
- (c) the individual in respect of whom those proceedings were taking place is a transferred constable.

(2) In this paragraph, “reporting officer” has the meaning given by regulation 2 of the 1996 Regulations as it applied immediately before 1st April 2013.

(3) For the purpose of sub-paragraph (1)(b), where the individual whose performance was being examined was not required to attend an inefficiency hearing, proceedings are to be treated as having been concluded—

- (a) in a case where that individual’s performance was, following a first interview, not found to be unsatisfactory, on the date on which the individual was informed of that outcome;
- (b) in a case where that individual’s performance was found to have improved sufficiently by the end of the period specified in accordance with regulation 6(3)(d) of those Regulations, on the date on which the individual was informed of that outcome; or
- (c) in a case where that individual’s performance was found to have improved sufficiently by the end of the period specified in accordance with regulation 10(4)(d) of those Regulations, on the date on which the individual was informed in writing in accordance with regulation 12(1)(b) of those Regulations.

(4) Sub-paragraph (5) applies where, at the conclusion of an inefficiency hearing—

- (a) the performance of the individual who was the subject of the hearing was found, in accordance with regulation 16(1) of those Regulations, to be unsatisfactory; and
- (b) a disposal other than that mentioned in regulation 17(1)(c) of those Regulations was made.

(5) Where this sub-paragraph applies, for the purpose of sub-paragraph (1)(b) proceedings are to be treated as having been concluded—

- (a) unless regulation 19(8) of the 1996 Regulations applies, on the date on which the period specified in regulation 19(6) of those Regulations for sending a notice of appeal has expired; or

- (b) where a notice of appeal was sent within that period or has been accepted late in accordance with regulation 19(8) of those Regulations, on the date on which a decision was sent in accordance with regulation 21(7) of those Regulations.
- (6) Sub-paragraph (7) applies where at the conclusion of an inefficiency hearing—
 - (a) the performance of the individual who was the subject of the hearing was found, in accordance with regulation 16(1) of the 1996 Regulations, to be unsatisfactory; and
 - (b) the disposal mentioned in regulation 17(1)(c) of those Regulations was made.
- (7) Where this sub-paragraph applies, for the purpose of sub-paragraph (1)(b) proceedings are to be treated as having been concluded—
 - (a) where no notice of appeal was sent in accordance with regulation 19(6) of the 1996 Regulations or, as the case may be, received late in accordance with regulation 19(8) of those Regulations, on the date on which a copy of the decision of the chairman of the inefficiency hearing was sent in accordance with regulation 18(4) of those Regulations; or
 - (b) where such a notice was sent or, as the case may be, received late—
 - (i) in a case where the disposal was quashed in accordance with regulation 21(4)(b) (i) of the 1996 Regulations, on the date that decision was sent in accordance with paragraph (7) of that regulation; or
 - (ii) in any other case, on the date on which a copy of the decision of the chairman of the inefficiency hearing was sent in accordance with regulation 18(4) of those Regulations.

Transitional provisions

- 4. Any proceedings commenced under the 1996 Regulations in relation to which those Regulations continue to have effect by virtue of paragraph 3—
 - (a) may be continued under those Regulations as modified by paragraph 10; and
 - (b) where continued, are to be treated as proceedings under those Regulations as so modified.
- 5. In relation to proceedings in relation to which the 1996 Regulations continue to have effect by virtue of paragraph 3—
 - (a) anything done before 1st April 2013 under those Regulations by or in relation to a chief constable of a police force is to be treated, on and after that date, as having been done by or in relation to the chief constable of the Police Service;
 - (b) anything done before 1st April 2013 under those Regulations by or in relation to an assistant chief constable of a police force are to be treated, on and after that date, as having been done by or in relation to the deputy chief constable designated under regulation 4 of these Regulations;
 - (c) anything done before 1st April 2013 under those Regulations by or in relation to a senior officer (within the meaning given by regulation 2 of those Regulations as it had effect immediately before that date) is, where the senior officer was the commander of the division to which the constable in respect of whom proceedings under those Regulations were taken, on and after that date to be treated as having been done by or in relation to the local commander in relation to the division to which that constable is assigned.
- 6.—(1) Sub-paragraph (2) applies to an individual who—
 - (a) before 1st April 2013, was an interviewing officer in relation to a case in relation to which the 1996 Regulations continue to have effect by virtue of paragraph 3; and
 - (b) is—

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- (i) a transferred constable; or
- (ii) engaged in service as a constable of the Police Service by virtue of paragraph 8(2) of schedule 5 to the Act.

(2) An individual to whom this sub-paragraph applies is to continue to carry out the functions of an interviewing officer in relation to the proceedings in relation to which that individual's appointment was made.

(3) Sub-paragraphs (4) and (5) apply where an individual appointed before 1st April 2013 to act as interviewing officer in relation to a case in relation to which the 1996 Regulations continue to have effect by virtue of paragraph 3 has not transferred to serve as a constable of the Police Service.

(4) Where this sub-paragraph applies, the deputy chief constable must appoint a constable of at least the rank of sergeant and of at least the rank of the constable under investigation to replace the individual who has not transferred as interviewing officer.

(5) Anything done before 1st April by or in relation to an interviewing officer who has not transferred is, on and after that date, to be treated as having been done by or in relation to the constable appointed to replace that interviewing officer.

7.—(1) Sub-paragraph (2) applies to an individual who—

(a) before 1st April 2013, was appointed as the chairman of an inefficiency hearing under regulation 14(1) of the 1996 Regulations in relation to a case in relation to which those Regulations continue to have effect by virtue of paragraph 3; and

(b) is—

- (i) a transferred constable; or
- (ii) engaged in service as a constable of the Police Service by virtue of paragraph 8(2) of schedule 5 to the Act.

(2) An individual to whom this sub-paragraph applies is to continue to act as chairman of the inefficiency hearing in relation to which that individual's appointment was made.

(3) Sub-paragraphs (4) and (5) apply where an individual appointed before 1st April 2013 to act as chairman of the inefficiency hearing in relation to a case in relation to which the 1996 Regulations continue to have effect by virtue of paragraph 3 has not transferred to serve as a constable of the Police Service.

(4) Where this paragraph applies, the deputy chief constable must appoint to replace the individual who has not transferred as chairman of the inefficiency hearing—

- (a) in a case where the constable whose performance is being examined at the hearing is of the rank of superintendent, an assistant chief constable; and
- (b) in any other case, a constable of at least the rank of superintendent.

(5) Anything done before 1st April by or in relation to a chairman of an inefficiency hearing who has not transferred is, on and after that date, to be treated as having been done by or in relation to the constable appointed to replace that chairman.

8.—(1) This paragraph applies to a requirement to resign from a police force by a specified date made under regulation 17(1)(a) or 18(3)(c) of the 1996 Regulations where—

- (a) that requirement was made before 1st April 2013;
- (b) the individual in respect of whom that requirement was made has not, in accordance with that requirement, resigned before 1st April 2013; and
- (c) that individual is a transferred constable.

(2) Where this paragraph applies, a requirement to resign from a police force by a specified date is, on and after 1st April 2013, to be treated as a requirement to resign from the Police Service by that specified date.

(3) Where a transferred constable has not resigned by the date specified in a requirement to which this paragraph applies, that constable is to be treated as having been dismissed from the Police Service on the specified date.

9.—(1) This paragraph applies where—

- (a) an individual has, before 1st April 2013, been issued by the chairman of an inefficiency hearing a written warning under regulation 17(1)(c) of the 1996 Regulations; and
- (b) the period specified by the chairman in that warning has not expired before 1st April 2013.

(2) Where this paragraph applies, a warning that an individual may be required to resign from a police force is to be treated as if it were a warning that that individual may be required to resign from the Police Service.

Modifications

10.—(1) The 1996 Regulations are modified as follows.

(2) In regulation 2—

- (a) omit the definition of “assistant chief constable”;
- (b) in the definition of “personnel officer”—
 - (i) for “an” to “1967”, substitute “a member of police staff appointed under section 26 of the Police and Fire Reform (Scotland) Act 2012”;
 - (ii) after “constable”, insert “of the Police Service”; and
 - (iii) after “constables”, insert “of the Police Service”;
- (c) in the definition of “senior officer”—
 - (i) after “constable”, in each place it occurs, insert “of the Police Service”; and
 - (ii) before “commander”, in each place it occurs, insert “local”;
- (d) in the definitions of “the constable”, “countersigning officer”, “interviewing officer”, and “reporting officer”, after “constable”, in each place it occurs, insert “of the Police Service”; and
- (e) in the appropriate places, insert—
 - ““chief constable” has the meaning given by section 99(1) of the Police and Fire Reform (Scotland) Act 2012;”;
 - ““deputy chief constable” means the deputy chief constable designated under regulation 4 of the Police Service of Scotland (Performance) Regulations 2013;”;
 - ““local commander” has the meaning given by section 99(1) of the Police and Fire Reform (Scotland) Act 2012;”;
 - ““Police Service” has the meaning given by section 99(1) of the Police and Fire Reform (Scotland) Act 2012;”;
 - and
 - ““transferred constable” means an individual who—
 - (a) before 1st April 2013 was serving as a constable of a police force (excluding any such individual who was, immediately before that date, engaged on relevant service within the meaning given by section 38A(1) of the Police (Scotland) Act 1967);

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- (b) is transferred to the Police Service under paragraph 6 of schedule 5 to the Police and Fire Reform (Scotland) Act 2012; and
 - (c) is not a special constable of the Police Service.”.
- (3) In regulation 3—
 - (a) in paragraph (a), before “constables”, insert “transferred”; and
 - (b) in paragraph (b), before the first and third “constable”, insert “transferred”.
- (4) In regulation 4, before the first “constable”, insert “transferred”.
- (5) In regulation 5—
 - (a) in paragraph (1), before the first “constable”, insert “transferred”; and
 - (b) in sub-paragraph (b)(ii) of that paragraph, after “constable”, insert “of the Police Service”;
 - (c) in paragraph (2), before “constable”, insert “transferred”; and
 - (d) in paragraph (4), after “constable”, insert “of the Police Service”.
- (6) In regulation 8, before the first “constable”, insert “transferred”.
- (7) In regulation 9—
 - (a) in paragraph (a), before the first “constable”, insert “transferred”; and
 - (b) in sub-paragraph (iii) of that paragraph, after “constable”, insert “of the Police Service”.
- (8) In regulation 10(4)(d), for “force”, substitute “Police Service”.
- (9) In regulation 12(1)(b), after the first “constable”, insert “of the Police Service”.
- (10) In regulation 13—
 - (a) in the opening words, after the first “constable”, insert “of the Police Service”; and
 - (b) in paragraph (c)(ii), for “a police force”, substitute “the Police Service”.
- (11) In regulation 14—
 - (a) in paragraph (1)—
 - (i) after the first “constable”, insert “of the Police Service”; and
 - (ii) for “assistant”, substitute “deputy”;
 - (b) in sub-paragraph (a) of paragraph (2), for “police” to the end of that sub-paragraph, substitute “Police Service”;
 - (c) in paragraph (3), after “constables”, insert “of the Police Service”; and
 - (d) in paragraph (4), for “assistant”, substitute “deputy”.
- (12) In regulation 15(6)—
 - (a) for “assistant”, substitute “deputy”; and
 - (b) after the second “constable”, substitute “of the Police Service”.
- (13) In regulation 16(4), for “assistant”, substitute “deputy”.
- (14) In regulation 17, for “force”, in each place it occurs, substitute “Police Service”.
- (15) In regulation 18—
 - (a) for “force”, in each place it occurs, substitute “Police Service”;
 - (b) in paragraph (4)(b), for “assistant” substitute “deputy”; and
 - (c) in paragraph (6)—
 - (i) for “assistant”, substitute “deputy”; and
 - (ii) after the second and sixth “constable”, insert “of the Police Service”.

- (16) In regulation 19—
- (a) in paragraph (1), before the first “constable”, insert “transferred”;
 - (b) in paragraph (2), before the first “constable”, insert “transferred”.
- (17) In regulation 20(3)(a), for “a police force” substitute “the Police Service”.

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations make provision for the procedures for dealing with cases where the performance of a constable of the Police Service of Scotland (“the Police Service”) is unsatisfactory.

Part 1 makes general provision. Regulations 1 to 3 make provision about the commencement, interpretation and application of the Regulations. Regulation 4 requires the chief constable of the Police Service to designate a deputy chief constable (“the deputy chief constable”) to carry out functions under the Regulations.

Parts 2 to 5 deal with the performance of constables of the Police Service below the rank of assistant chief constable.

Part 2 makes provision about the first stage in dealing with such a constable whose performance is considered to be unsatisfactory. Regulations 5 and 6 require the constable to attend an interview (a “first interview”) with the constable’s immediate supervisor or, by request, with a constable senior in rank to that supervisor and make provision about the arrangement of that interview. Regulation 7 sets out the procedure to be followed at that interview and regulation 8 sets out the procedure to be followed following that interview, including how the interview and its outcome should be recorded.

Part 3 makes provision for the second stage for dealing with a constable whose performance continues to be unsatisfactory following the first stage. Regulation 9 requires such a constable to attend a second interview to discuss that constable’s performance. Regulation 10 makes provision about the arrangement of that interview, including provision for notifying the constable that the interview is to take place and why it is required. Regulation 11 establishes the procedure for a second interview, including making provision about who must conduct the interview and conferring on that individual the power to give the constable a warning if that constable’s performance is deemed unsatisfactory. Regulation 12 makes requirements about the procedure to be followed after the second interview.

Part 4 establishes a third stage in the process for dealing with constables whose performance continues to be considered to be unsatisfactory following the first and second stages. Regulation 13 makes provision for such a constable’s performance to be assessed following the second interview and for notice to be given to the constable, in the event that the constable’s performance is considered to be unsatisfactory, that the constable is required to attend an inefficiency hearing. Regulation 14 sets out how such a hearing is to be arranged.

Regulation 15 provides for the procedure at an inefficiency hearing, including requiring the deputy chief constable to appoint a constable of at least the rank of superintendent to chair that hearing and permitting the chairing constable to appoint other constables or an advocate or solicitor to assist. Regulation 16 allows for the postponement or adjournment of the inefficiency hearing either because the constable is unable to attend or because the chairing constable considers that it is appropriate to allow a further period to assess the constable’s performance. The procedure for carrying out such

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a further assessment and the continuation of the hearing following that assessment is also set out in regulation 16.

Regulation 17 requires the chairing constable, at the conclusion of the inefficiency hearing, to determine whether the constable's performance has been unsatisfactory. The chairing constable is required to record that determination and the reasons for it. Where the chairing constable determines that the constable's performance has been unsatisfactory, regulation 18 permits the chairing constable to require the constable to resign, demote the constable in rank or issue a warning about future performance and set a period for that performance to be assessed. Regulation 19 makes further provision about the assessment of the performance of a constable who has been given a warning under regulation 18, including requiring the chairing constable following such an assessment, to require the constable to resign if performance has not improved.

Part 5 makes provision about appeals. Regulation 20 permits an appeal to be made to the chief constable of the Police Service against a finding following an inefficiency hearing that the constable's performance has been unsatisfactory, the disposal ordered following such a finding, or both. Regulation 21 makes provision about the procedure for determining an appeal. In particular, it permits the chief constable to fix an appeal hearing, sets out the procedure to be followed at such a hearing and allows the chief constable to refer the matter back to the chairing constable to hold a separate hearing on such matters as the chief constable may determine. Regulation 22 makes provision as to how an appeal should be determined, including the action the chief constable may take.

Part 6 makes provision about the performance of constables of the Police Service of the rank of assistant chief constable and above. Regulation 23 requires the Scottish Police Authority to set standards of performance for such constables and to maintain procedures for measuring the performance of such officers against those standards.

Part 7 and the Schedule revoke the Police (Efficiency) (Scotland) Regulations 1996 and make savings and transitional provisions to deal with proceedings under those Regulations in relation to constables of police forces who are transferred to the Police Service and which are not concluded on the date these Regulations come into force.