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SCOTTISH STATUTORY INSTRUMENTS

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**2013 No. 63**

**The Police Appeals Tribunals (Scotland) Rules 2013**

**Citation and commencement**

1. These Rules may be cited as the Police Appeals Tribunals (Scotland) Rules 2013 and come into force on 1st April 2013.

**Interpretation**

2. In these Rules, unless the context otherwise requires—

“appeal” means an appeal by a constable which is made under section 56(1) of the 2012 Act;

“the appellant” means the constable making an appeal;

“Conduct Regulations” means the Police Service of Scotland (Conduct) Regulations 2013<sup>(1)</sup>;

“disputed decision” means the decision which is the subject of the appeal;

“misconduct hearing” means—

(a) in the case of an appellant who is not a senior officer, a hearing which the appellant was required to attend pursuant to regulation 15 of the Conduct Regulations; or

(b) in the case of any other appellant, a hearing which the appellant was required to attend pursuant to regulation 16 of the Senior Officers’ Conduct Regulations;

“inefficiency hearing” means an inefficiency hearing which the appellant was required to attend in terms of regulation 14 of the Performance Regulations;

“Performance Regulations” means the Police Service of Scotland (Performance) Regulations 2013<sup>(2)</sup>;

“the Police Appeals Tribunal Register” means the register kept under rule 3(3);

“the Registrar” has the meaning given by rule 3(1);

“representative” includes a legally qualified person;

“the respondent” has the meaning given in rule 4;

“Senior Officers’ Conduct Regulations” means the Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013<sup>(3)</sup>;

“statement of case” means—

(a) in the case of an appellant, the statement which the appellant is required to send in accordance with rule 5 together with any adjustments made in accordance with rule 7; and

(b) in the case of the respondent, the statement which the respondent is required to send in accordance with rule 6 together with any adjustments made in accordance with rule 7;

“the tribunal” means the police appeals tribunal appointed under paragraph 1 of schedule 3 to the 2012 Act in relation to the appeal; and

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(1) S.S.I.2013/60.  
(2) S.S.I.2013/61.  
(3) S.S.I.2013/62.

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

### **The Registrar**

3.—(1) For the purposes of these Rules, the Registrar means a member of the Authority’s staff (not being a constable) appointed by the Authority to perform the functions of the Registrar specified in these Rules in relation to any appeal brought by a constable.

(2) On receipt of a notice of appeal, the Registrar must forthwith notify the Lord President of the Court of Session of the need to appoint members to a police appeals tribunal in accordance with paragraph 1(2)(b) of schedule 3 to the 2012 Act.

(3) The Registrar must keep a register of all appeals made under section 56(1) of the 2012 Act.

(4) Any functions of the Registrar specified in these Rules may be performed by another member of staff of the Authority (not being a constable) who is appointed by the Authority to act as an assistant to the Registrar.

### **The respondent**

4. On any appeal to a police appeals tribunal under section 56(1) of the 2012 Act the respondent is—

- (a) in the case of an appeal by a senior officer, the Authority; and
- (b) in any other case, the chief constable.

### **Notice of appeal**

5.—(1) An appeal which may be made under section 56 of the 2012 Act to a police appeals tribunal must be made by written notice sent by the appellant to the Registrar.

(2) The notice of appeal must state—

- (a) the name and address of the appellant;
- (b) that the notice is a notice of appeal;
- (c) the date and any reference number of the disputed decision and the name and address of the respondent; and
- (d) the name and address of the representative of the appellant, if any, and whether the tribunal should send replies or notices concerning the appeal to the representative instead of the appellant.

(3) The appellant must attach to the notice of appeal—

- (a) a statement setting out fully on what grounds the appeal is made;
- (b) a copy of the disputed decision including, in the case of an appellant who is not a senior officer, the decision of the chairing constable of the misconduct hearing held in terms of the Conduct Regulations or, as the case may be, the decision of the chairing constable of the inefficiency hearing held in terms of the Performance Regulations; and
- (c) any documentary evidence upon which the appellant intends to rely for the purposes of the appeal.

(4) The appellant or the appellant’s representative must sign the notice of appeal.

(5) The appellant must send the notice of appeal, together with the statement and documents referred to in paragraph (3), to the Registrar not later than 28 days after the date on which the disputed decision against which the appeal is made was given to or served upon the appellant.

(6) Where the appellant considers that the appellant cannot provide with the notice of appeal any document required by paragraph (3), the appellant may include in the notice of appeal a request for

an extension of the time limit for the submission of any such document which sets out the reasons why an extension is requested.

(7) At the same time as the appellant complies with paragraph (5), the appellant must send a copy of the notice of appeal and of the statement and other documents referred to in paragraph (3) to the respondent.

(8) Following receipt of the notice of appeal and accompanying documents, the Registrar must—

- (a) send an acknowledgement of the receipt to the appellant;
- (b) enter particulars of the appeal in the Police Appeals Tribunal Register;
- (c) send written notice to the appellant and the respondent of the reference number of the appeal and of the address to which any communication to the Registrar concerning the appeal should be sent; and
- (d) provide each member of the tribunal with a copy of the notice of appeal and of any accompanying documents.

(9) Where the appellant's notice of appeal includes a request as mentioned in paragraph (6), the chairing member of the tribunal must decide the matter as soon as reasonably practicable.

### **Reply by the respondent**

6.—(1) The respondent must, not later than 21 days after the date on which a copy of the notice of appeal was sent to the respondent in terms of rule 5(7), send to the Registrar a notice stating—

- (a) whether or not the respondent intends to oppose the appeal; and
- (b) the name and address of any representative of the respondent to whom any communication relating to the appeal should be sent.

(2) Where the respondent intends to oppose the appeal, the respondent must attach to the notice—

- (a) a statement setting out fully on what grounds the appeal is opposed and any representations with respect to the information contained with the appellant's notice of appeal;
- (b) where the disputed decision was made under the Conduct Regulations, a certified copy of—
  - (i) the misconduct form prepared in terms of regulation 11(4)(a) of those Regulations in connection with the proceedings which were the subject of the misconduct hearing;
  - (ii) the written note summarising the proceedings at the misconduct hearing prepared by the chairing constable of that hearing in terms of regulation 19(11) of those Regulations; and
  - (iii) the notice prepared by the chief constable in terms of regulation 28(11) of those Regulations;
- (c) where the disputed decision was made under the Senior Officers' Conduct Regulations, a certified copy of—
  - (i) the notification made in terms of regulation 24(1) of those Regulations; and
  - (ii) the audio recording of the misconduct hearing made under regulation 19(5) of those Regulations or, as the case may be, the written record of the misconduct hearing made under regulation 19(6) of those Regulations;
- (d) where the disputed decision was made under the Performance Regulations, a certified copy of—
  - (i) the written note summarising the proceedings of the inefficiency hearing prepared by the chairing constable of that hearing in terms of regulation 15(8) of those Regulations;

- (ii) the notice requiring the constable to attend that hearing in terms of regulation 14 of those Regulations; and
  - (iii) the determination of the chief constable notified in terms of regulation 22(7) of those Regulations; and
  - (e) any documentary evidence upon which the respondent intends to rely for the purposes of opposing the appeal.
- (3) The notice and statement submitted in terms of paragraph (2)(a) must be signed—
- (a) where the respondent is the chief constable, by the chief constable; or
  - (b) where the respondent is the Authority, by a member of staff of the Authority who is authorised to sign such documents.
- (4) Where the respondent considers that the respondent cannot provide with the notice under paragraph (1) any document required by paragraph (2), the respondent may include in the notice a request for an extension of the time limit for submission of any such document which sets out the reasons why an extension is requested.
- (5) At the same time as the respondent complies with paragraph (1), the respondent must send a copy of the notice and, where applicable, the statement and other documents referred to in paragraph (2) to the appellant.
- (6) Following receipt of the notice sent pursuant to paragraph (1), the Registrar must—
- (a) send an acknowledgement of the receipt to the respondent; and
  - (b) provide each member of the tribunal with a copy of the notice and of any accompanying documents.
- (7) Where the respondent's notice includes a request as mentioned in paragraph (4), the chairing member of the tribunal must decide the matter as soon as reasonably practicable.

### **Adjustment of statements**

7.—(1) Following receipt of the notice sent to the Registrar pursuant to rule 6(1), the Registrar must send to each of the parties a notice informing the party that it may make adjustments to its statement of case by sending a note of any adjustments to the Registrar, and a copy thereof to the other party, not later than 21 days after the date on which the notice is sent to the party.

(2) Either party may make adjustments to its respective statement of case at any time after the expiry of the period mentioned in paragraph (1) with the leave of the tribunal and subject to such terms as the tribunal thinks fit.

(3) In any case where the leave of the tribunal is given for the purpose of paragraph (2), the party must send a note of the adjustments to the Registrar and a copy thereof to the other party.

### **Oral hearing**

8.—(1) Not later than 14 days after—

- (a) the expiry of the period for adjustments under rule 7(1); or
- (b) where an additional period or periods of adjustment have been granted to either of the parties under rule 7(2), the expiry of the last such additional period,

the Registrar must send a notice to each party requesting confirmation of whether the party requires an oral hearing.

(2) Not later than 7 days after the date the notice under paragraph (1) was sent, the appellant and respondent must each send a notice to the Registrar indicating whether that party requires an oral hearing.

(3) If neither party requires an oral hearing then the appeal must be considered in accordance with rule 16 and the Registrar must send a notice to each party not later than 14 days after receipt of the notices under paragraph (2) informing them that no oral hearing is to take place.

### **Notice of hearing**

**9.**—(1) Where one or both parties request an oral hearing in accordance with rule 8, the Registrar must, with due regard to the convenience of the parties, fix the time and place of the hearing and, not less than 21 days before the date so fixed (or such shorter time as the parties agree), send to each party a notice that the hearing is to be at such time and such place.

(2) The hearing of the appeal must be fixed so as to commence not later than 6 months after the date on which the Registrar received the notice of appeal under rule 5.

(3) The Registrar must include with the notice of hearing—

- (a) information and guidance as to attendance at the hearing of the parties and witnesses and the right to be represented as specified in section 57(3) of the 2012 Act;
- (b) a statement of the right of the parties to ask for and to receive reasons in writing for a decision of the tribunal; and
- (c) a statement explaining the possible consequences of non-attendance and of the right of an appellant, and of any respondent who has presented a reply, who does not attend and is not represented, to make representations in writing.

(4) Subject to paragraph (2), the tribunal may alter the time and place of the hearing and the Registrar must give the parties not less than 7 days' (or such shorter time as the parties agree) notice of any such alteration; but any altered hearing date must not (unless the parties agree) be before the date notified under paragraph (1).

### **Attendance of witness and production of documents**

**10.**—(1) Subject to paragraph (2), the chairing member of the tribunal may at any time exercise the powers conferred on that member by section 59(1) of the 2012 Act to require the appellant, respondent or any other person to attend to give evidence or to produce any documents or information—

- (a) on the application of a party; or
- (b) where that member is authorised to do so by the tribunal on its own motion.

(2) An application by a party for the purposes of paragraph (1) must be made in writing to the Registrar and, unless it is accompanied by the written consent of the other party, the Registrar must send a copy of the application to the other party.

(3) Where a party makes an application for the purposes of paragraph (1), which is not accompanied by the written consent of the other party, the chairing member of the tribunal must not determine the application until—

- (a) except where the other party agrees, the period within which objections may be made has elapsed; and
- (b) any objection has been considered by the tribunal.

(4) If the other party objects to the application within 7 days after the date on which the copy is sent to him, the tribunal must consider the objection and, if it considers it necessary for the determination of the application, must give the parties an opportunity of appearing before it.

(5) A party who is given the opportunity of appearing before the tribunal for the purpose mentioned in paragraph (4) may be represented by any person who may represent that party at a hearing fixed in accordance with rule 9.

- (6) Where any written notice requiring any person to attend to give evidence or to produce any documents or information is made by virtue of section 59(1) of the 2012 Act, the Registrar must—
- (a) forthwith send the notice signed by the chairing member of the tribunal to the person who is named in the notice as the person subject to the requirement specified;
  - (b) send a copy of the notice—
    - (i) where the notice was sent to a person who is not a party, to the parties; or
    - (ii) where the notice was sent to one party, to the other party; and
  - (c) provide each member of the tribunal with a copy of the notice and enter particulars of the notice in the Police Appeals Tribunal Register.

### **Withdrawal of appeal**

11. The appellant may—
- (a) at any time before—
    - (i) where neither party requests an oral hearing in accordance with rule 8, the date on which the notice is sent by the Registrar under rule 8(3); or
    - (ii) in any other case, the hearing of the appeal,withdraw the appeal by sending to the Registrar a notice stating that the appellant withdraws the appeal signed by the appellant or the appellant's representative; or
  - (b) at the hearing of the appeal, with the leave of the tribunal, withdraw the appeal.

### **Hearings to be in public**

12.—(1) A hearing fixed in accordance with rule 9 must be heard in public unless the tribunal with the consent of the parties directs that the hearing, or a part of it, is to be heard in private.

(2) Where the tribunal sits in private it may admit to the hearing such other persons on such terms and conditions as it considers appropriate and must admit any person who has a statutory right to attend.

### **Exclusion of persons disrupting proceedings**

13. Without prejudice to any other powers it may have, the tribunal may exclude from the hearing, or part of it, any person whose conduct has disrupted or is likely, in the opinion of the tribunal, to disrupt the hearing.

### **Failure of parties to attend hearing**

14.—(1) If a party fails to attend or be represented at a hearing of which the party has been duly notified in terms of rule 9, the tribunal may—

- (a) unless it is satisfied that there is sufficient reason for such absence, hear and determine the appeal in the party's absence; or
- (b) adjourn the hearing.

(2) Before deciding to dispose of the appeal in the absence of a party, the tribunal must consider the party's statement of case and any other documents submitted by that party in relation to the appeal.

### **Procedure at the hearing**

- 15.—(1) Subject to the provisions of these Rules—

- (a) the procedure at a hearing of an appeal must be determined by the tribunal and it has the power to hear any new evidence or to re-hear the evidence given at the misconduct hearing or inefficiency hearing; and
  - (b) the tribunal must conduct the hearing in such manner as it considers most suitable to the clarification of the issues before it and generally to the just handling of the proceedings; it must so far as appears to it appropriate seek to avoid formality in its proceedings.
- (2) At the beginning of the hearing the chairing member of the tribunal must explain the order of proceedings which the tribunal proposes to adopt.
- (3) Each party is to be heard in such order as the tribunal must determine and is entitled—
- (a) to give evidence;
  - (b) to call witnesses and to question any witnesses called by the other party; and
  - (c) to address the tribunal both on the evidence and generally on the subject-matter of the appeal.
- (4) Any member of the tribunal may put questions to the parties or their representative and to any witnesses called by the parties.
- (5) At the hearing of the appeal the tribunal may, if it is satisfied that it is just and reasonable to do so, permit a party to rely on grounds not stated in that party's statement of case, or any adjustment of it made in terms of rule 7, and to adduce any evidence not submitted with the statement.
- (6) If, after the commencement of the hearing, one member of the tribunal (other than the chairing member) is absent, the appeal may, with the consent of the parties, be heard by the other members and, in that event, the tribunal is deemed to be properly constituted.
- (7) The tribunal may from time to time adjourn the hearing and, if the time and place of the adjourned hearing are announced before the adjournment, no further notice is required.

### **Decision of the tribunal**

- 16.**—(1) Subject to paragraphs (3) and (4), the tribunal must determine the appeal—
- (a) where no hearing has been held, after consideration of any statements of case including any adjustments made in accordance with rule 7; or
  - (b) where a hearing has been held, either at the end of the hearing or, where the tribunal reserves its decision, at a later date.
- (2) The decision of the tribunal may be taken by a majority and the chairing member must record whether the decision was unanimous or taken by a majority.
- (3) The decision of the tribunal must be made—
- (a) where no hearing has been held pursuant to rule 8, not later than 6 months after the date on which the Registrar received the notice of appeal under rule 5; or
  - (b) where a hearing has been so held, not later than one month after the end of the hearing.
- (4) Subject to paragraph (5), where a decision cannot be made within the relevant period mentioned in paragraph (3) by reason of any member of the tribunal being incapable of carrying out that member's duties—
- (a) the time limits specified in paragraph (3) do not apply; and
  - (b) in such a case the decision of the tribunal must be made as soon as reasonable practicable after the date on which the member's incapacity ceases.
- (5) Notwithstanding paragraph (4), an appeal may be determined by the tribunal in the absence of one member (other than the chairing member) if the parties consent to the tribunal proceeding to

a determination in the absence of that member, in which case the chairing member has a casting vote in taking the decision of the tribunal if the votes are equally divided.

(6) The decision of the tribunal must be recorded not later than 7 days after the date on which it is made in a document which must contain—

- (a) the terms of the order made by the tribunal in determining the appeal including any direction as to expenses which the tribunal makes by virtue of paragraph 3(2) of schedule 3 to the 2012 Act; and
- (b) a statement of the reasons for the decision,

and be signed and dated by the chairing member of the tribunal.

(7) The Registrar must forthwith send a copy of the document to each party.

### **Irregularities**

17.—(1) Any irregularity resulting from failure to comply with any provision of these Rules or of any direction of the tribunal before it has reached its decision does not of itself render the proceedings void.

(2) Where any such irregularity comes to the attention of the tribunal, it may, and must if it is considers that a party may have been prejudiced by that irregularity, give such directions to cure or waive the irregularity as it thinks just before reaching its decision.

(3) Clerical mistakes in any document recording a direction or decision of the chairing member of the tribunal or of the tribunal, or errors arising in such a document from an accidental slip or omission, may be corrected by the chairing member of the tribunal by certificate under the chairing member's hand.

### **Proof of documents and certification of decisions**

18. Any document purporting to be a document duly signed by the chairing member of the tribunal or signed or issued on behalf of the tribunal by the Registrar is, unless the contrary is proved, deemed to be a document so signed or issued as the case may be.

### **Sending of documents etc.**

19.—(1) Any document or thing required or authorised by these Rules to be sent to any person must be duly sent to that person—

- (a) if it is sent to that person at that person's proper address by a registered post service (as defined in section 125(1) of the Postal Services Act 2000<sup>(4)</sup>) or by a postal service which provides for the delivery of the document or thing to be recorded; or
- (b) if it is delivered to that person or left at that person's proper address.

(2) Any notice or document required or authorised by these Rules to be sent by any person is treated as having been sent—

- (a) where it is sent in accordance with paragraph (1)(a), on the date on which it is received for despatch by the postal operator concerned (as defined in section 125(1) of the Postal Services Act 2000); or
- (b) where it is delivered or left at the proper address, the date on which the person to whom it is addressed receives it.

(3) The proper address of any person to whom any document or thing is required or authorised to be sent in terms of these Rules is—

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(4) 2000 c.26.



- (a) in the case of the Registrar, the principal offices of the Authority;
- (b) in the case of an incorporated company or body, the registered or principal office of the company or body; and
- (c) in any other case, the last known address of the person in question.

**Saving, transitional and revocation**

**20.** The Schedule has effect.

St Andrew's House,  
Edinburgh  
21st February 2013

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A member of the Scottish Government