

2013 No. 63

POLICE

The Police Appeals Tribunals (Scotland) Rules 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 Rules in exercise of the powers conferred on them by sections 56(3) and 125(1) and paragraph 4 of schedule 3 to the Police and Fire Reform (Scotland) Act 2012(a) and all other powers enabling them to do so.

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(b);

“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(c);

“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;

(a) 2012 asp 8.
(b) S.S.I. 2013/60.
(c) S.S.I. 2013/61.

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

“Senior Officers’ Conduct Regulations” means the Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013(a);

“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

“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;

(a) S.S.I. 2013/62.

- (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^(a)) 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—

- (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.

(a) 2000 c.26.

Saving, transitional and revocation

20. The Schedule has effect.

St Andrew's House,
Edinburgh
21st February 2013

KENNY MACASKILL
A member of the Scottish Government

SAVING, TRANSITIONAL AND REVOCATION

Interpretation

1. In this Schedule “the old Rules” means the Police Appeals Tribunals (Scotland) Rules 1996(a).

Saving: appeals pending immediately before 1st April 2013

2. Notwithstanding the revocation of the old Rules by paragraph 5, they continue to have effect, subject to the modifications in paragraph 3, in relation to any appeal under section 30 of the Police (Scotland) Act 1967(b) in which a notice of appeal under the old Rules was sent to the Registrar thereunder before 1st April 2013.

Modifications of the old Rules for appeals pending immediately before 1st April 2013

3.—(1) For the purposes of paragraph 2, the old Rules are subject to the following modifications.

(2) In rule 1(2)—

- (a) in the definition of “the Registrar” for the words “the officer of the relevant police authority” substitute “the member of the Authority’s staff (not being a constable)” and after “Rules” insert “in relation to any appeal brought by a constable”; and
- (b) omit the definition of “relevant police authority”.

(3) In rule 2—

- (a) omit paragraph (1);
- (b) in paragraph (4) for “the police authority” substitute “the Scottish Police Authority”;
- (c) in paragraph (5) for “chairman of the police authority” substitute “chairing member of the Scottish Police Authority”;
- (d) in paragraph (6) omit the words from “of the police force” to the end; and
- (e) in paragraph (7) for the words from “same police authority” to the end substitute “Scottish Police Authority who is appointed by the authority to act as an assistant to the Registrar”.

(4) In rule 3—

- (a) in paragraph (a) for the words from “the police authority” to the end substitute “the Scottish Police Authority; and”; and
- (b) in paragraph (b) for the words from “of the police force” to the end substitute “of the Police Service of Scotland”.

(5) In rule 5(3)—

- (a) in paragraph (a) for “the relevant police force” substitute “the Police Service of Scotland”; and
- (b) in paragraph (b) for “a police authority” substitute “the Scottish Police Authority”.

(6) Omit rule 16(8).

(a) S.I. 1996/1644.

(b) 1967 c.77. As amended by the Police and Magistrates’ Courts Act 1994 (c.29), section 55(1) and repealed by the Police and Fire Reform (Scotland) Act 2012 (asp 8), schedule 8, Part 1 subject to savings in the Police and Fire Reform (Scotland) Act 2012 (Supplementary, Transitional, Transitory and Saving Provisions) Order 2013.

(7) In rule 19(3)(a) for “relevant police authority” substitute “Scottish Police Authority”.

(8) Anything done by a Registrar under the old Rules before they are modified by this paragraph is regarded, on and after modification, as if it had been done by the Registrar under the old Rules as so modified.

Transitional: appeals not started by 1st April 2013

4.—(1) Any right of appeal arising under section 30 of the Police (Scotland) Act 1967 existing immediately before 1st April 2013 in respect of which no notice of appeal under the old Rules has been sent to the Registrar is, on and after that date, regarded as if it were a right of appeal arising under section 56(1) of the 2012 Act.

(2) For the purposes of section 56(1) and (2) of the 2012 Act, any such right of appeal is regarded as an appeal against any decision to dismiss or demote in rank taken in pursuance of regulations made under section 26 of the Police (Scotland) Act 1967.

(3) In respect of any appeal subject to these Rules by virtue of sub-paragraph (1), in relation to a decision made under the Police (Conduct) (Scotland) Regulations 1996, the Police (Efficiency) (Scotland) Regulations 1996, or the Police (Conduct) (Senior Officers) (Scotland) Regulations 1999, these Rules are modified as follows—

- (a) “Conduct Regulations” means the Police (Conduct) (Scotland) Regulations 1996;
- (b) “Performance Regulations” means the Police (Efficiency) (Scotland) Regulations 1996;
- (c) “Senior Officers’ Conduct Regulations” means the Police (Conduct) (Senior Officers) (Scotland) Regulations 1999;
- (d) in rule 2 in the definition of “misconduct hearing”—
 - (i) in paragraph (a) for “regulation 15” substitute “regulation 10”; and
 - (ii) in paragraph (b) for “regulation 6” substitute “regulation 15”;
- (e) in rule 2 in the definition of “inefficiency hearing” for “regulation 14” substitute “regulation 13”;
- (f) for rule 6(2)(b)(i) to (iii) substitute—
 - “(i) the misconduct form prepared under regulation 6(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 charring constable of that hearing in terms of regulation 13(16) of those Regulations; and
 - (iii) the document prepared by the chief constable in terms of regulation 21(6) of those Regulations;”;
- (g) for rule 6(2)(c)(i) and (ii) substitute—
 - “(i) the report of the misconduct hearing submitted in terms of regulation 21(1) of those Regulations;
 - (ii) the discipline form prepared in connection with the proceedings which were the subject of the misconduct hearing and which includes the decision of the police authority under regulation 22(2) of those Regulations; and
 - (iii) the written note and audio recording made under regulation 17(12) of those Regulations;”;
- (h) for rule 6(2)(d)(i) to (iii) substitute—
 - “(i) the written note summarising the proceedings of the inefficiency hearing, prepared by the person charring that hearing, in terms of regulation 14(8) of those Regulations;
 - (ii) the notice requiring the constable to attend that hearing in terms of regulation 13 of those Regulations; and

(iii) the decision of the chief constable notified in terms of regulation 21(7) of those Regulations; and”.

Revocation

5. The old Rules are revoked.

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules make provision as to the procedure on appeals by constables under section 56 of the Police and Fire Reform (Scotland) Act 2012 (“the 2012 Act”) to the Police Appeals Tribunal (“the Tribunal”) established by that Act.

Rule 3 provides for the Registrar to the Tribunal to be appointed by the Scottish Police Authority. The Registrar may not be a constable. The Rules confer various functions on the Registrar, including the establishment of a register of all appeals.

Rule 4 establishes that the respondent is the Scottish Police Authority in the case of senior officer appeals (chief constable, deputy chief constables and assistant chief constables), and the chief constable in the case of other ranks.

The procedure for making an appeal is prescribed in rule 5. An appellant has 28 days following the date of the decision being appealed to submit a notice of appeal and accompanying documents. An extension of time may be granted in relation to the accompanying documents. Under rule 6 the respondent has 21 days after the notice of appeal was sent to notify intention to oppose the appeal together with accompanying documents. Extension of time for submission of accompanying documents is also possible for the respondent.

Rule 7 sets out the procedure for adjustment of statements of case.

Once adjustment has come to an end the Registrar must send a notice to both parties requesting each of them to confirm whether they require an oral hearing. Each party must confirm within 7 days after the notice was sent. If neither party requests an oral hearing then the Registrar will let both know that no oral hearing will take place within 14 days and the appeal will then be dealt with under rule 16.

If one or both parties request an oral hearing then one will take place and the Registrar will select a date convenient for both parties and give 21 days’ notice of the hearing date (or such less notice as the parties agree). The hearing date must be fixed so as to begin no later than 6 months after the notice of appeal was received by the Registrar.

Rule 10 makes provision in relation to the exercise of the powers in section 59(1) of the 2012 Act for the attendance of individuals and disclosure of documents or information.

Rule 11 allows for the withdrawal of the appeal by the appellant in certain circumstances. Rule 12 makes provision for hearings to be heard in public unless the Tribunal and parties consent to it being heard in private.

Rule 15 sets out the procedural details of a hearing. The Tribunal will determine its own procedure within the boundaries of the Rules but must seek to avoid undue formality. The chairing member of the Tribunal will explain the order of proceedings which it intends to adopt for the particular appeal. Both parties are entitled to give evidence, call and question witnesses and address the Tribunal on both the evidence and the subject-matter of the appeal. The Tribunal may put questions to parties or witnesses itself. If considered just and reasonable, a party may be permitted to rely on grounds not previously included in that party’s statement of case (whether as originally notified or later adjusted) or adduce evidence not submitted with the statement. The Tribunal may adjourn the hearing from time to time and if it has stated the time and place of resumption of the hearing before it adjourns then no further notice of the resumption time and place need be given.

Rule 16 makes provision about the decision of the Tribunal and how it is made. Subject to some exceptions, where no hearing has been requested the decision of the Tribunal must be given not later than 6 months after the notice of appeal was received by the Registrar; where a hearing has taken place, not later than a month after the end of the hearing.

Rule 17 makes provision for the excusal of procedural irregularities. Rule 19 makes clear when documents or things are regarded as having been sent.

The Schedule to the Rules makes provision in relation to the transition from the former Police Appeals Tribunals established under the Police (Scotland) Act 1967 (“the 1967 Act”) to those established under Chapter 9 of the 2012 Act. Any right of appeal arising under the 1967 Act before 1st April 2013, in respect of which a notice of appeal has not been sent to the Registrar by that date, is to be dealt with under these Rules. Some consequential modifications of these Rules are made to take account of the origin of that right to appeal from regulations made under the 1967 Act.

Any right of appeal arising under the 1967 Act before 1st April 2013, in respect of which a notice of appeal has been sent to the Registrar by that date (and is therefore an appeal in progress), is to continue to be dealt with under the Rules applicable to Police Appeals Tribunals under the 1967 Act, notwithstanding those Rules are otherwise revoked. Those Rules are therefore saved for the purpose of ensuring such appeals can continue, subject to consequential modifications to take account of the changes made by police reform and the replacement of former police bodies with new police bodies. To facilitate this transitional provision, separate provision is expected to be made in another instrument which saves section 30 and Schedule 3 to the 1967 Act with modifications for this purpose.

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