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SCOTTISH STATUTORY INSTRUMENTS

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**2016 No. 51**

**POLICE**

**The Police Service of Scotland (Senior Officers) (Performance) Regulations 2016**

*Made* - - - - 26th January 2016  
*Laid before the Scottish Parliament* - - - - 28th January 2016  
*Coming into force* - - 1st April 2016

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<sup>(1)</sup> 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 (Senior Officers) (Performance) Regulations 2016 and come into force on 1st April 2016.

**Interpretation**

2.—(1) In these Regulations—

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

“appeal panel” means a panel appointed under regulation 19(2);

“audio recording” means a recording made on any device on which sounds are recorded so as to be capable of being reproduced;

“chairing member” means, unless the context otherwise requires—

- (a) a person appointed under regulation 28(3)(a); or
  - (b) a person designated under regulation 28(5) or (7),
- to chair a panel conducting a performance hearing or, as the case may be, further performance hearing;

“disposal” means any action mentioned in regulation 36(1);

“excluded person” means—

- (a) a member of the Authority or the Authority’s staff;
- (b) a member of the staff of the Scottish Administration;
- (c) a member of any committee of the Authority established under paragraph 9(1) of schedule 1 to the Act;
- (d) a constable;
- (e) the Police Investigations and Review Commissioner;
- (f) a member of the Police Investigations and Review Commissioner’s staff appointed under paragraph 7 or 7A of schedule 4 to the Police, Public Order and Criminal Justice (Scotland) Act 2006(2);
- (g) a person whose appointment could give rise to a reasonable suspicion of bias because of an interest or association they have, or because of a pressure to which they may be subject;

“extended final improvement notice” means a final improvement notice extended by virtue of regulation 36(1)(c);

“extended final improvement period” means the period specified by the panel under regulation 36(4)(a)(i);

“final improvement notice” means a notice prepared under regulation 25(2);

“final improvement period” has the meaning given by regulation 24(6)(c);

“first improvement notice” means a notice prepared under regulation 14(2)(a);

“first improvement period” has the meaning given by regulation 13(7)(c);

“further performance hearing” means a hearing arranged under regulation 38 to consider the senior officer’s performance following a performance hearing;

“human resources professional” means a member of the police staff or a member of the Authority’ staff who (in each case) has specific responsibility for personnel matters relating to the Police Service;

“improvement notice” includes a first improvement notice, a final improvement notice and an extended final improvement notice;

“improvement period” means the period within which the senior officer’s performance is required to improve specified in an improvement notice and includes a first improvement period, a final improvement period and an extended final improvement period (see regulation 8);

“panel” means the panel appointed to conduct a performance hearing or (as the case may be) a further performance hearing;

“performance appeal meeting” means a meeting arranged under regulation 17 or, as the case may be, 19 to consider an appeal by the senior officer against the finding and outcome of a performance meeting;

“performance hearing” means a hearing arranged under regulation 29 to consider the senior officer’s performance following a progress meeting;

“performance meeting” means a meeting arranged under regulation 12 to consider a senior officer’s performance;

“police adviser” means a constable appointed to give advice on the proceedings to—

- (a) the reporting officer at a performance meeting or (as the case may be) a progress meeting; or
- (b) the chief constable or (as the case may be) the appeal panel at a performance appeal meeting;

“police representative” must be construed in accordance with regulation 4;

“progress meeting” means a meeting arranged under regulation 23 to consider the senior officer’s performance following a performance meeting;

“reporting officer” means—

- (a) if the senior officer is an assistant chief constable, the deputy chief constable who has immediate supervisory responsibility for the senior officer;
- (b) if the senior officer is a deputy chief constable, the chief constable; and
- (c) if the senior officer is the chief constable, the chairing member of the Authority appointed under paragraph 2(1)(a) of schedule 1 to the Act;

“the senior officer” means a senior officer to whom these Regulations apply and whose performance is being assessed in accordance with these Regulations;

“validity period” means the period for which an improvement notice is valid (see regulation 8);

“working day” means any day other than—

- (a) a Saturday or Sunday;
- (b) a day which is a bank holiday in Scotland within the meaning given by paragraph 2 of Schedule 1 to the Banking and Financial Dealings Act 1971(3); or
- (c) a day which is a public holiday in Scotland; and

“writing” includes electronic communications within the meaning given by section 15 of the Electronic Communications Act 2000 (and “written” is to be construed accordingly)(4).

(2) In these Regulations, references to—

- (a) unsatisfactory performance; and
- (b) the performance of the senior officer being unsatisfactory,

are references to an inability or failure of the senior officer to perform the duties of the officer’s role or rank (or both) to a satisfactory standard.

## Application

3.—(1) These Regulations apply only in relation to unsatisfactory performance occurring on or after 1st April 2016.

(2) These Regulations do not apply to any individual engaged in service as a constable of the Police Service—

- (a) under arrangements made under section 16 of the Act; or
- (b) by virtue of paragraph 8(2) of schedule 5 to the Act.

(3) 1971 c.80. Paragraph 2 of Schedule 1 has been amended by section 1 of the St Andrew’s Day Bank Holiday (Scotland) Act 2007 (asp 2).

(4) 2000 c.7. Section 15 has been amended by Schedule 17 to the Communications Act 2003 (c.21).

### **Police representative**

4.—(1) The senior officer may choose a constable, or an individual nominated by the senior officer's staff association, to act as the senior officer's police representative.

(2) But the senior officer may not choose as a police representative any person who is otherwise involved in any aspect of the senior officer's performance being considered in accordance with these Regulations.

(3) A police representative may—

- (a) advise the senior officer throughout any proceedings under these Regulations;
- (b) accompany the senior officer to any meeting or hearing which the senior officer is required to attend under these Regulations;
- (c) make representations on the senior officer's behalf at any meeting or hearing which the senior officer is required to attend under these Regulations (including asking questions of any witnesses where the senior officer would be entitled to do so); and
- (d) make representations to the Authority concerning any aspect of the proceedings under these Regulations.

(4) The chief constable must permit any constable or member of the police staff acting as a police representative under these Regulations to use a reasonable amount of duty time for the purpose of performing the functions mentioned in paragraph (3).

### **Procedure in senior officer's absence**

5.—(1) This regulation applies where the senior officer—

- (a) does not attend a meeting or hearing under these Regulations; or
- (b) participates in a performance hearing or further performance hearing by video link or other means under regulation 32(9).

(2) If this regulation applies—

- (a) the senior officer may be represented at the meeting or hearing by a police representative; and
- (b) the fact that the senior officer is not represented by a police representative does not prevent the meeting or hearing being conducted and concluded in the officer's absence.

### **Standard of proof**

6. A finding at any meeting or hearing under these Regulations as to whether the senior officer's performance has been unsatisfactory must be made on a balance of probabilities.

### **Consideration of documents**

7. Despite the failure by any person to provide any document in accordance with these Regulations in advance of any meeting or hearing, the person conducting or chairing that meeting or hearing may allow that document to be considered at the meeting or hearing if it is considered appropriate to do so.

### **Improvement periods and validity periods**

8.—(1) Every improvement notice given under these Regulations must specify—

- (a) an improvement period; and
- (b) a validity period.

- (2) An improvement period must be a period of not more than 12 months.
- (3) A validity period must—
  - (a) commence on the same day as the improvement period specified in the improvement notice to which it relates;
  - (b) end on or after the day on which that improvement period ends; and
  - (c) subject to regulation 9(5), be a period of not more than 12 months.
- (4) If the senior officer makes a sufficient improvement in performance during the improvement period specified in any improvement notice, that improvement must be maintained until the end of the validity period of that notice (if longer than the improvement period).

#### **Extension of improvement periods and validity periods**

- 9.—(1) A first improvement period or a final improvement period may, on the application of the senior officer or otherwise, be extended by the reporting officer.
- (2) An extended final improvement period may, on the application of the senior officer or otherwise, be extended by the reporting officer.
- (3) But an extension made under paragraph (1) or (2) must not result in any improvement period exceeding 12 months.
- (4) If an improvement period is extended, the validity period specified in the relevant improvement notice must also be extended, provided that the validity period must end not later than 6 months after the end of the improvement period as extended.
- (5) An extension of a validity period under paragraph (4) may result in that validity period, as extended, exceeding 12 months.
- (6) If any improvement period or validity period is extended, any reference in these Regulations to that improvement period or validity period must be read as a reference to that period as extended.

#### **Suspension of improvement and validity periods**

- 10.—(1) Any improvement period or validity period must—
  - (a) be suspended where the senior officer is absent from duty for a continuous period of 4 weeks or more; and
  - (b) resume when the senior officer returns to duty.
- (2) But paragraph (1) does not apply where the senior officer's absence is the subject of the proceedings under these Regulations.

## **PART 2**

### **Performance Meetings**

#### **Circumstances in which a performance meeting may be required**

- 11.—(1) If the senior officer's reporting officer considers that the performance of the senior officer is unsatisfactory, that reporting officer may refer the senior officer to a performance meeting.
- (2) If the senior officer's reporting officer is a constable, the chief constable must notify the Authority of a referral under paragraph (1).

### **Arrangement of performance meeting**

12.—(1) A reporting officer who refers a senior officer to a performance meeting must send a notice in writing requiring the senior officer to attend such a meeting.

- (2) A notice sent under paragraph (1) must give details of—
- (a) the procedures for determining the date and time of the performance meeting;
  - (b) the respect in which the senior officer's performance is considered to be unsatisfactory;
  - (c) the possible outcomes of a performance meeting, progress meeting and performance hearing;
  - (d) any proposed attendance at the meeting of a human resources professional or a police adviser to advise the reporting officer on the proceedings;
  - (e) any proposed attendance at the meeting of any other named person and the senior officer's right to refuse to consent to their attendance;
  - (f) the senior officer's right to seek advice from a police representative;
  - (g) the senior officer's right to be represented at the meeting by a police representative; and
  - (h) the requirement to provide to the reporting officer, in advance of the meeting, a copy of any documents on which the senior officer intends to rely.

(3) A notice sent under paragraph (1) must be accompanied by a copy of any document relied upon by the reporting officer in coming to the view that the performance of the senior officer is unsatisfactory.

(4) The reporting officer must, if reasonably practicable, seek to agree a date and time for the meeting with the senior officer.

(5) If no date and time are agreed under paragraph (4), the reporting officer must specify a date and time for the meeting.

- (6) If a date and time are specified under paragraph (5) and—
- (a) the senior officer or the senior officer's police representative will not be available at that date and time; and
  - (b) the senior officer proposes an alternative date and time which satisfy the requirements of paragraph (7),

the meeting must be postponed to the date and time proposed.

- (7) An alternative date and time must—
- (a) be reasonable; and
  - (b) fall not later than 10 working days from the date specified by the reporting officer under paragraph (5).

(8) When the date and time of the meeting have been determined in accordance with paragraphs (4) to (7), the reporting officer must send a notice in writing to the senior officer specifying the date, time and place of that meeting.

### **Procedure at performance meeting**

13.—(1) The procedure at a performance meeting is as follows.

(2) The meeting must be conducted by the reporting officer.

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

(4) Any other person whose proposed attendance was notified to the senior officer in accordance with regulation 12(2)(e) may attend the meeting provided the senior officer has not refused to consent to their attendance.

(5) The reporting officer must—

- (a) explain how the senior officer’s performance is considered to be unsatisfactory;
- (b) provide the senior officer with an opportunity to respond; and
- (c) provide the senior officer’s police representative (if the officer has one) with an opportunity to make representations in accordance with regulation 4(3)(c).

(6) If, having considered any representations made by virtue of paragraph (5)(b) and (c) and any other representations made at the meeting (if any), the reporting officer is satisfied that the senior officer’s performance is satisfactory, the reporting officer must inform the senior officer that no further action is to be taken.

(7) If, having considered any representations made by virtue of paragraph (5)(b) and (c) and any other representations made at the meeting (if any), the reporting officer is satisfied that the senior officer’s performance is unsatisfactory, the reporting officer must inform the senior officer as to—

- (a) the respect in which the senior officer’s performance is considered unsatisfactory;
- (b) the improvement that is required in the senior officer’s performance;
- (c) the period within which that improvement is required to take place (to be known as “the first improvement period”);
- (d) the fact that the senior officer will receive a written improvement notice;
- (e) the validity period of that notice and the effect of regulation 8(4); and
- (f) the circumstances in which the senior officer may be required to attend a progress meeting.

(8) The reporting officer may postpone or adjourn the performance meeting to a specified later time or date if satisfied that it is necessary or expedient to do so and the procedure mentioned in regulation 12(4) to (8) applies to a postponed meeting or the continuation of an adjourned meeting.

### **Procedure following performance meeting**

**14.—**(1) As soon as reasonably practicable after the date of the conclusion of the performance meeting the reporting officer must prepare and send to the senior officer a written record of that meeting.

(2) If at a performance meeting the performance of the senior officer is found to be unsatisfactory, the reporting officer must, as soon as reasonably practicable after the date of the conclusion of that meeting—

- (a) prepare and send to the senior officer a first improvement notice; and
- (b) give to the senior officer written notice of—
  - (i) the senior officer’s right to appeal under regulation 16;
  - (ii) the name of the person to whom an appeal notice must be sent;
  - (iii) the matters in relation to which an appeal may be made and the grounds of appeal;
  - (iv) the last date for lodging an appeal; and
  - (v) the senior officer’s right to submit comments on the written record of the meeting.

(3) Subject to paragraph (4), the senior officer may submit written comments on the record of the performance meeting to the reporting officer not later than 7 working days from the date on which the copy of that record is received by the senior officer.

(4) The reporting officer may, at the senior officer's request, extend the period mentioned in paragraph (3).

(5) The reporting officer must ensure that the following are retained together and filed appropriately:—

- (a) the first improvement notice;
- (b) the written record of the performance meeting; and
- (c) the senior officer's written comments on that record (if any).

### **First improvement notice**

**15.** A first improvement notice prepared under regulation 14(2)(a) must—

- (a) record—
  - (i) the respect in which the senior officer's performance is considered to be unsatisfactory;
  - (ii) the improvement that is required in the senior officer's performance; and
  - (iii) the length of the first improvement period;
- (b) specify a validity period;
- (c) inform the senior officer of the circumstances in which attendance at a progress meeting may be necessary; and
- (d) be signed and dated by the reporting officer.

### **Appeal against the finding and outcome of a performance meeting**

**16.—**(1) If at a performance meeting the reporting officer finds that the performance of the senior officer is unsatisfactory, the senior officer may appeal against—

- (a) that finding; and
- (b) any term of the first improvement notice specified in paragraph (3) (referred to in this regulation and regulation 21 as "the relevant terms").

(2) An appeal under paragraph (1) may only be made on one or more of the grounds of appeal specified in paragraph (4).

(3) The relevant terms are—

- (a) the respect in which the senior officer's performance is considered unsatisfactory;
- (b) the improvement that is required in performance; and
- (c) the length of the first improvement period.

(4) The grounds of appeal are—

- (a) that the finding of unsatisfactory performance is unreasonable;
- (b) that any of the relevant terms are unreasonable;
- (c) that there is evidence that could not reasonably have been considered at the performance meeting which could have affected materially—
  - (i) the finding of unsatisfactory performance; or
  - (ii) any of the relevant terms; and
- (d) that there was a breach of the procedures set out in these Regulations or any other unfairness which could have affected materially—
  - (i) the finding of unsatisfactory performance; or

- (ii) any of the relevant terms.
- (5) An appeal under paragraph (1) is to be commenced by—
  - (a) if the senior officer is an assistant chief constable, sending a written appeal notice to the chief constable; and
  - (b) in any other case, sending such a notice to the Authority.
- (6) A notice sent under paragraph (5) must—
  - (a) be sent not later than 7 working days from the date of receipt of the first improvement notice;
  - (b) set out the finding or the relevant terms (or both) against which the appeal is made;
  - (c) set out the grounds of appeal; and
  - (d) be accompanied by any evidence on which the senior officer intends to rely.
- (7) The person to whom an appeal notice is to be sent may, on the application of the senior officer, extend the period mentioned in paragraph (6) if satisfied that it is appropriate to do so.
- (8) The submission of an appeal notice under paragraph (6) does not affect the continuing operation of a first improvement notice sent under regulation 14(2)(a).

**Arrangement of performance appeal meeting: assistant chief constables**

- 17.—**(1) This regulation applies if an assistant chief constable sends an appeal notice under regulation 16(5).
- (2) As soon as reasonably practicable after receipt of such a notice the chief constable must—
    - (a) notify the Authority that such a notice has been received; and
    - (b) require the senior officer to attend a performance appeal meeting; or
    - (c) determine the appeal without such a meeting.
  - (3) The chief constable may determine the appeal without a performance appeal meeting only with the agreement of the senior officer.
  - (4) If the chief constable determines the appeal in accordance with paragraph (3), the chief constable must notify the Authority of that determination.
  - (5) If the senior officer is required to attend a performance appeal meeting the chief constable must send to the senior officer a written notice giving details of—
    - (a) the procedures for determining the date and time of that meeting;
    - (b) any proposed attendance at the meeting of a human resources professional or a police adviser to advise the chief constable on the proceedings;
    - (c) any proposed attendance at the meeting of the reporting officer;
    - (d) any proposed attendance at the meeting of any other named person and the senior officer's right to refuse to consent to their attendance;
    - (e) the senior officer's right to seek advice from a police representative; and
    - (f) the senior officer's right to be represented at the meeting by a police representative.
  - (6) The chief constable must, if reasonably practicable, seek to agree a date and time for the meeting with the senior officer.
  - (7) If no date and time are agreed under paragraph (6), the chief constable must specify a date and time for the meeting.
  - (8) If a date and time are specified under paragraph (7) and—

- (a) the chief constable or the senior officer’s police representative will not be available at that date and time; and
- (b) the chief constable proposes an alternative date and time which satisfy the requirements of paragraph (9),

the meeting must be postponed to the date and time proposed.

(9) An alternative date and time must—

- (a) be reasonable; and
- (b) fall not later than 10 working days from the date specified by the chief constable under paragraph (7).

(10) When the date and time of a performance appeal meeting are determined in accordance with paragraphs (6) to (9), the chief constable must send a notice in writing to the senior officer specifying the date, time and place of that meeting.

(11) The chief constable must, prior to the meeting taking place, notify the Authority of the date, place and time of that meeting.

#### **Procedure at performance appeal meeting: assistant chief constables**

**18.**—(1) The procedure at a performance appeal meeting arranged under regulation 17 is as follows.

- (2) The meeting must be conducted by the chief constable.
- (3) The following people may attend the meeting:—
  - (a) a human resources professional or a police adviser to advise the chief constable on the proceedings;
  - (b) the reporting officer; and
  - (c) any other person whose proposed attendance was notified to the senior officer in accordance with regulation 17(5)(d), provided the senior officer has not refused to consent to their attendance.
- (4) The chief constable must—
  - (a) provide the senior officer with an opportunity to make representations; and
  - (b) provide the senior officer’s police representative (if the senior officer has one) with an opportunity to make representations in accordance with regulation 4(3)(c).

(5) The chief constable may postpone or adjourn the performance appeal meeting to a specified later time or date if it appears necessary or expedient to do so and the procedure mentioned in regulation 17(6) to (11) applies to a postponed meeting or the continuation of an adjourned meeting.

#### **Arrangement of performance appeal meeting: deputy chief constables and chief constable**

**19.**—(1) This regulation applies where a deputy chief constable or the chief constable submits an appeal notice under regulation 16(5).

(2) The Authority must appoint a panel (to be known as an “appeal panel”) to conduct the appeal meeting.

(3) If the appeal notice is submitted by a deputy chief constable, a panel appointed under paragraph (2) must comprise—

- (a) a chairing member who is a member of the Authority; and
- (b) one other person—

- (i) whom the Authority considers appropriate based on that person's skills, knowledge and expertise; and
- (ii) who is not an excluded person.

(4) In the event that the votes of a panel constituted in accordance with paragraph (3) are evenly split on any decision, the chairing member's decision will constitute the decision of the panel.

(5) If the appeal notice is submitted by the chief constable, a panel appointed under paragraph (2) must comprise—

- (a) a chairing member who is a member of the Authority, other than the chairing member of the Authority appointed under paragraph 2(1)(a) of schedule 1 to the Act;
- (b) one member who is a member of the staff of the Scottish Administration; and
- (c) one member—
  - (i) whom the Authority considers appropriate based on that person's skills, knowledge and expertise; and
  - (ii) who is not an excluded person.

(6) As soon as reasonably practicable after receipt of an appeal notice submitted under regulation 16(5) the appeal panel must decide whether to—

- (a) require the senior officer to attend a performance appeal meeting; or
- (b) determine the appeal without such a meeting.

(7) The appeal panel may determine the appeal without a performance appeal meeting only with the agreement of the senior officer.

(8) If the senior officer is required to attend a performance appeal meeting the appeal panel must send to the senior officer a written notice giving details of—

- (a) the procedures for determining the date and time of that meeting;
- (b) any proposed attendance at the meeting of a human resources professional or police adviser to advise the appeal panel on the proceedings;
- (c) any proposed attendance at the meeting of the reporting officer;
- (d) any proposed attendance at the meeting of any other named person and the senior officer's right to refuse to consent to their attendance;
- (e) the senior officer's right to seek advice from a police representative; and
- (f) the senior officer's right to be represented at the meeting by a police representative.

(9) The appeal panel must, if reasonably practicable, seek to agree a date and time for the meeting with the senior officer.

(10) If no date and time are agreed under paragraph (9), the appeal panel must specify a date and time for the meeting.

(11) If a date and time are specified under paragraph (10) and—

- (a) the senior officer or the senior officer's police representative will not be available at that date and time; and
- (b) the senior officer proposes an alternative date and time which satisfy the requirements of paragraph (12),

the meeting must be postponed to the date and time proposed.

(12) An alternative date and time must—

- (a) be reasonable; and

(b) fall not later than 10 working days from the date specified by the appeal panel under paragraph (10).

(13) When the date and time of a performance appeal meeting are determined in accordance with paragraphs (9) to (12), the appeal panel must send a notice in writing to the senior officer specifying the date, time and place of that meeting.

#### **Procedure at performance appeal meeting: deputy chief constables and chief constable**

**20.**—(1) The procedure at a performance appeal meeting arranged under regulation 19 is as follows.

(2) The following people may attend the meeting—

- (a) a human resources professional or a police adviser to advise the appeal panel on the proceedings;
- (b) the reporting officer; and
- (c) any other person whose proposed attendance was notified to the senior officer in accordance with regulation 19(8)(d), provided the senior officer has not refused to consent to their attendance.

(3) The appeal panel must—

- (a) provide the senior officer with an opportunity to make representations; and
- (b) provide the senior officer's police representative (if the senior officer has one) with an opportunity to make representations in accordance with regulation 4(3)(c).

(4) The appeal panel may postpone or adjourn the performance appeal meeting to a specified later time or date if it appears necessary or expedient to do so and the procedure mentioned in regulation 19(9) to (13) applies to a postponed meeting or the continuation of an adjourned meeting.

#### **Determination of appeal**

**21.**—(1) An appeal under regulation 16 must be determined in accordance with this regulation.

(2) In a case where a performance appeal meeting takes place, the person or appeal panel determining the appeal must consider—

- (a) the appeal notice sent under regulation 16(5);
- (b) any evidence accompanying that notice;
- (c) the written record of the performance meeting;
- (d) the senior officer's written comments on that record (if any); and
- (e) any representations made at the performance appeal meeting.

(3) In a case where no performance appeal meeting takes place, the person or appeal panel determining the appeal must consider—

- (a) the appeal notice sent under regulation 16(5);
- (b) any evidence accompanying that notice;
- (c) the written record of the performance meeting; and
- (d) the senior officer's written comments on that record (if any).

(4) Having considered the things mentioned in paragraph (2) or, as the case may be, (3), the person or appeal panel determining the appeal may—

- (a) confirm or reverse the finding of unsatisfactory performance; and
- (b) confirm or vary any of the relevant terms against which the appeal is made.

- (5) A reversal of the finding of unsatisfactory performance revokes the first improvement notice.
- (6) If the person or appeal panel determining the appeal—
  - (a) reverses the finding of unsatisfactory performance; or
  - (b) varies any of the relevant terms of the first improvement notice against which the appeal is made,

the decision of that person or panel replaces, from the date of that decision, the finding, the first improvement notice or the relevant terms against which the appeal is made.

- (7) As soon as reasonably practicable after determining an appeal under regulation 16, the person or appeal panel determining that appeal must—
  - (a) send to the senior officer a written notice of that person's or that panel's decision;
  - (b) in a case where a performance appeal meeting has taken place, send to the senior officer a written record of that meeting; and
  - (c) in the case of a performance appeal meeting which relates to an assistant chief constable, notify the Authority of the outcome of that meeting.

## PART 3

### Progress meetings

#### **Circumstances in which a progress meeting may be required**

**22.**—(1) The reporting officer for a senior officer who has received a first improvement notice must assess the senior officer's performance—

- (a) at the end of the first improvement period specified in that notice; and
- (b) during any part of the validity period specified in that notice which continues after the end of the first improvement period.

(2) The reporting officer must inform the senior officer in writing as to whether, in the reporting officer's opinion—

- (a) there has been a sufficient improvement in the senior officer's performance by the end of the first improvement period; and
- (b) that improvement has been maintained until the end of the validity period.

(3) If the reporting officer is of the opinion that there has been a sufficient improvement in the senior officer's performance by the end of the first improvement period, the reporting officer must remind the senior officer of the need to maintain that improvement until the end of the validity period.

(4) If the reporting officer is of the opinion that—

- (a) the senior officer has failed to make the required improvement in performance by the end of the first improvement period; or
- (b) where the required improvement in performance has been made by the end of that period, that improvement has not been maintained until the end of the validity period,

the reporting officer must refer the senior officer to a progress meeting to consider the senior officer's performance.

(5) If the senior officer's reporting officer is a constable, the reporting officer must notify the Authority of a referral under paragraph (4).

(6) A progress meeting may consider only—

- (a) the unsatisfactory performance referred to in the first improvement notice; and

- (b) unsatisfactory performance which is similar to or connected with the unsatisfactory performance referred to in that notice.

### **Arrangement of progress meeting**

**23.**—(1) If the reporting officer refers the senior officer to a progress meeting under regulation 22(4), the reporting officer must send a notice in writing requiring the senior officer to attend such a meeting.

(2) A notice under paragraph (1) must give details of—

- (a) the procedures for determining the date and time of the progress meeting;
- (b) the respect in which the senior officer's performance is considered to be unsatisfactory;
- (c) the possible outcomes of a progress meeting and a performance hearing;
- (d) any proposed attendance at the meeting of a human resources professional or a police adviser to advise the reporting officer on the proceedings;
- (e) any proposed attendance at the meeting of the reporting officer;
- (f) any proposed attendance at the meeting of any other named person and the senior officer's right to refuse to consent to their attendance;
- (g) the senior officer's right to seek advice from a police representative;
- (h) the senior officer's right to be represented at the meeting by a police representative; and
- (i) the requirement to provide to the reporting officer, in advance of the meeting, a copy of any documents on which the senior officer intends to rely.

(3) A notice under paragraph (1) must be accompanied by a copy of any document relied upon in coming to the view that the performance of the senior officer is unsatisfactory.

(4) The reporting officer must, if reasonably practicable, seek to agree a date and time for the progress meeting with the senior officer.

(5) If no date and time are agreed under paragraph (4), the reporting officer must specify a date and time for the meeting.

(6) If a date and time are specified under paragraph (5) and—

- (a) the senior officer or the senior officer's police representative will not be available at that date and time; and
- (b) the senior officer proposes an alternative date and time which satisfy the requirements of paragraph (7),

the meeting must be postponed to the date and time proposed.

(7) An alternative date and time must—

- (a) be reasonable; and
- (b) fall not later than 10 working days from the date specified by the reporting officer under paragraph (5).

(8) When the date and time of a progress meeting are determined in accordance with paragraphs (4) to (7), the reporting officer must send a notice in writing to the senior officer specifying the date, time and place of that meeting.

### **Procedure at progress meeting**

**24.**—(1) The procedure at a progress meeting is as follows.

(2) The meeting must be conducted by the reporting officer.

- (3) The following people may attend the meeting if requested to do so by the reporting officer—
  - (a) a human resources professional or a police adviser to advise the reporting officer on the proceedings; and
  - (b) any other person whose proposed attendance was notified to the senior officer in accordance with regulation 23(2)(f), provided the senior officer has not refused to consent to their attendance.
- (4) The reporting officer must—
  - (a) explain how the senior officer’s performance is considered to be unsatisfactory;
  - (b) provide the senior officer with an opportunity to make representations in response; and
  - (c) provide the senior officer’s police representative (if the officer has one) with an opportunity to make representations in accordance with regulation 4(3)(c).
- (5) Paragraph (6) applies if, having considered any representations made by virtue of paragraph (4)(b) or (c) and any other representations made at the meeting (if any), the reporting officer is satisfied that—
  - (a) the senior officer has failed to make the required improvement in performance by the end of the first improvement period; or
  - (b) in a case where the required improvement in performance has been made by the end of the first improvement period, that improvement has not been maintained until the end of the validity period,
- (6) If this paragraph applies, the reporting officer must inform the senior officer as to—
  - (a) the respect in which the senior officer’s performance is considered to be unsatisfactory;
  - (b) the improvement that is required in the senior officer’s performance;
  - (c) the period within which that improvement is required to take place (to be known as “the final improvement period”);
  - (d) the fact that the senior officer will receive a written final improvement notice;
  - (e) the validity period of that notice and the effect of regulation 8(4); and
  - (f) the circumstances in which the senior officer may be required to attend a performance hearing.
- (7) The reporting officer may postpone or adjourn the meeting to a specified later time if satisfied that it is necessary or expedient to do so and the procedure mentioned in regulation 23(4) to (8) applies to a postponed meeting or the continuation of an adjourned meeting.

### **Procedure following progress meeting**

**25.**—(1) As soon as reasonably practicable after the date of the conclusion of the progress meeting the reporting officer must prepare and send to the senior officer a written record of that meeting.

(2) If at a progress meeting the performance of the senior officer is found to be unsatisfactory the reporting officer must, as soon as reasonably practicable after the date of the conclusion of that meeting, prepare and send to the senior officer a final improvement notice.

(3) Subject to paragraph (4), the senior officer may submit written comments on the written record of the meeting to the reporting officer not later than 7 working days from the date on which the copy of that record is received by the senior officer.

(4) The reporting officer may, at the senior officer’s request, extend the period mentioned in paragraph (3).

(5) The reporting officer must ensure that the following are retained together and filed appropriately:—

- (a) the final improvement notice;
- (b) the written record of the progress meeting; and
- (c) the senior officer's written comments on that record (if any).

### **Final improvement notices**

- 26.** A final improvement notice prepared under regulation 25(2) must—
- (a) record—
    - (i) the respect in which the senior officer's performance is considered to be unsatisfactory;
    - (ii) the improvement that is required in the senior officer's performance; and
    - (iii) the final improvement period;
  - (b) specify a validity period;
  - (c) inform the senior officer as to the circumstances in which attendance at a performance hearing may be required; and
  - (d) be signed and dated by the reporting officer.

## **PART 4**

### **Performance hearings**

#### **Circumstances in which a performance hearing may be required**

**27.—(1)** The reporting officer for a senior officer who has received a final improvement notice must assess the senior officer's performance—

- (a) at the end of the final improvement period specified in that notice; and
  - (b) during any part of the validity period specified in that notice which continues after the end of the final improvement period.
- (2) The reporting officer must inform the senior officer in writing as to whether—
- (a) there has been a sufficient improvement in the senior officer's performance by the end of the final improvement period; and
  - (b) that improvement has been maintained until the end of the validity period.
- (3) If the reporting officer is of the opinion that there has been a sufficient improvement in the senior officer's performance by the end of the final improvement period, the reporting officer must remind the senior officer of the need to maintain that improvement until the end of the validity period.
- (4) If the reporting officer is of the opinion that—
- (a) the senior officer has failed to make the required improvement in performance by the end of the final improvement period; or
  - (b) where the required improvement in performance has been made by the end of that period, that improvement has not been maintained until the end of the validity period,

the reporting officer must refer the senior officer to a performance hearing to consider the senior officer's performance.

- (5) A performance hearing may consider only—
  - (a) the unsatisfactory performance referred to in the first improvement notice and the final improvement notice; and

- (b) unsatisfactory performance which is similar to or connected with the unsatisfactory performance referred to in those notices.

### **Appointment of panel**

**28.**—(1) This regulation applies where the reporting officer refers the senior officer to a performance hearing under regulation 27(4).

- (2) The Authority must appoint a panel to conduct the performance hearing.
- (3) If the senior officer is an assistant chief constable, the Authority must appoint to the panel—
  - (a) a chairing member who is a member of the Authority;
  - (b) the chief constable; and
  - (c) one other member—
    - (i) whom the Authority considers appropriate based on that individual's skills, knowledge and expertise; and
    - (ii) who is not an excluded person.
- (4) If the senior officer is a deputy chief constable, the Authority must appoint to the panel—
  - (a) a member of the Authority;
  - (b) one member—
    - (i) whom the Authority considers appropriate based on that person's experience of police work, whether in Scotland or elsewhere in the UK; and
    - (ii) who is not an excluded person; and
  - (c) one member—
    - (i) whom the Authority considers appropriate based on that person's skills, knowledge and expertise; and
    - (ii) who is not an excluded person.
- (5) The Authority must designate one of the panel members appointed under paragraph (4) as a chairing member.
- (6) If the senior officer is the chief constable, the Authority must appoint to the panel 3 individuals—
  - (a) whom the Authority considers appropriate based on those individuals' skills, knowledge and expertise; and
  - (b) who are not excluded persons.
- (7) The Authority must designate one of the panel members appointed under paragraph (6) as a chairing member.
- (8) The Authority may appoint up to two individuals to act as assessors to assist the panel.
- (9) The Authority must arrange for the provision to every person appointed under this regulation of—
  - (a) any document which was available to the reporting officer in relation to the performance meeting;
  - (b) any document which was available to the person or panel conducting any performance appeal meeting;
  - (c) any document which was available to the reporting officer in relation to the progress meeting;

- (d) the records of the performance meeting, any performance appeal meeting and the progress meeting;
- (e) any submission made under regulation 30; and
- (f) the improvement notice and the final improvement notice.

### **Arrangement of the performance hearing**

**29.**—(1) If the reporting officer refers the senior officer to a performance hearing under regulation 27(4) the Authority must send a notice in writing requiring the senior officer to attend such a hearing.

- (2) A notice sent under paragraph (1) must inform the senior officer as to—
  - (a) the membership of the panel;
  - (b) the procedures for determining the date and time of the performance hearing;
  - (c) the respect in which the senior officer’s performance is considered to be unsatisfactory;
  - (d) the possible outcomes of a performance hearing;
  - (e) the effect of regulation 30;
  - (f) any proposed attendance at the hearing of the reporting officer;
  - (g) any proposed attendance at the hearing of any other named person and the senior officer’s right to refuse to consent to their attendance;
  - (h) the senior officer’s right to seek advice from a police representative;
  - (i) the senior officer’s right to be represented at the hearing by a police representative;
  - (j) the requirement to provide to the chairing member of the panel, in advance of the hearing, a copy of any document on which the senior officer intends to rely.
- (3) A notice sent under paragraph (1) must be accompanied by—
  - (a) a copy of any document relied upon in coming to the view that the performance of the senior officer is unsatisfactory; and
  - (b) a copy of the documents mentioned in regulation 28(9).

### **Procedure on receipt of notice of performance hearing**

**30.**—(1) The senior officer must, not later than 20 working days from receipt, respond in writing to a notice under regulation 29(1) indicating either—

- (a) that the senior officer accepts the reporting officer’s opinion mentioned in regulation 27(4); or
  - (b) that the senior officer does not accept that opinion.
- (2) A senior officer who accepts the reporting officer’s opinion may make a written submission to the Authority.
- (3) A senior officer who does not accept that opinion must provide a written submission to the Authority explaining the reasons for not accepting that opinion.
- (4) A submission under this regulation must be accompanied by any document on which the senior officer intends to rely at the performance hearing.
- (5) The Authority must notify the senior officer of its receipt of a submission under this regulation.

## **Witnesses**

**31.**—(1) The reporting officer and the senior officer must, no later than 10 working days from the date of the notification under regulation 30(5), supply to each other—

- (a) the names and addresses of any witnesses on whom they propose to rely at the performance hearing and a summary of the evidence each witness will give; or
- (b) notice that they do not intend to rely on any witnesses.

(2) The reporting officer and the senior officer must then seek to agree a joint list of witnesses and provide that list to the chairing member of the panel.

(3) If it is not possible for the reporting officer and the senior officer to agree a joint list of witnesses, they must each supply to the chairing member of the panel a list of proposed witnesses.

(4) As soon as reasonably practicable after receiving a list or lists of witnesses under paragraph (2) or (3) (as the case may be), the chairing member of the panel must—

- (a) decide which, if any, of the listed witnesses are to attend the performance hearing; and
- (b) notify the reporting officer and the senior officer of that decision.

(5) The chairing member of the panel may determine that witnesses not included in any list under this regulation (whether joint or otherwise) are to attend the performance hearing.

(6) The chairing member of the panel must not decide, in pursuance of paragraph (4) or (5), that any witness is to give evidence at the performance hearing unless the chairing member of the panel reasonably considers that it is necessary for the witness to do so.

(7) The chairing member of the panel must notify in writing any witness who is to attend the performance hearing.

## **Timing of performance hearing**

**32.**—(1) The performance hearing must take place not later than 35 working days after a notice has been sent under regulation 29(1).

(2) But the chairing member of the panel may extend the time period mentioned in paragraph (1) where it would be in the interests of fairness to do so.

(3) If the time period is extended under paragraph (2), the chairing member of the panel must provide written notification to both the Authority and the senior officer of the reasons for that extension.

(4) The chairing member of the panel must, if reasonably practicable, seek to agree a time and date for the performance hearing with the senior officer.

(5) If no date and time are agreed under paragraph (4), the chairing member of the panel must specify a time and date for that hearing.

(6) If a date and time are specified under paragraph (5) and—

- (a) the senior officer or the senior officer's police representative will not be available at that date and time; and
- (b) the senior officer proposes an alternative date and time which satisfy the requirements of paragraph (7),

the hearing must be postponed to the date and time proposed by the senior officer.

(7) An alternative date and time must—

- (a) be reasonable;
- (b) fall not later than 10 working days from the date specified by the chairing member of the panel under paragraph (5); and

(c) fall not later than—

- (i) 35 working days from the date of a notice given under regulation 29(1); or
- (ii) the end of any extended period specified under paragraph (2).

(8) If the date and time of the performance hearing have been determined in accordance with paragraphs (4) to (7), the chairing member of the panel must send a notice in writing to the senior officer specifying the date, time and place of that hearing.

(9) The chairing member of the panel may allow a senior officer or a senior officer's police representative (or both) who is unable, on reasonable grounds, to attend the performance hearing to participate in that hearing by video link or any other reasonable means.

### **Postponement and adjournment of performance hearing**

**33.**—(1) The chairing member of the panel may, if satisfied that it is necessary or expedient in the circumstances—

- (a) postpone to a specified date a performance hearing which has not commenced; or
- (b) adjourn to a specified date a performance hearing which has commenced.

(2) A date specified under paragraph (1) may fall after the end of the period of 35 working days mentioned in regulation 32(1).

(3) Where a hearing is postponed or adjourned under paragraph (1) the chairing member of the panel must notify in writing the senior officer, the other members of the panel and the Authority of—

- (a) the revised date, time and place of the hearing; and
- (b) the reasons for the postponement or adjournment.

### **Procedure at performance hearing**

**34.**—(1) The procedure at a performance hearing is as follows.

(2) The following individuals may attend the hearing if requested to do so by the chairing member of the panel:—

- (a) the reporting officer;
- (b) any person whose attendance was notified to the senior officer in accordance with regulation 29(2)(g), provided the senior officer has not refused to consent to their attendance.

(3) The chairing member of the panel must—

- (a) explain to the senior officer how the senior officer's performance is considered to be unsatisfactory;
- (b) provide the senior officer with an opportunity to make representations in response; and
- (c) provide the senior officer's police representative (if the senior officer has one) with an opportunity to make representations in accordance with regulation 4(3)(c).

(4) The chairing member of the panel may permit the senior officer to ask questions of any witness.

(5) An audio recording of the hearing must be made and the senior officer must, on request, be supplied with a copy of that recording.

### **Finding**

**35.**—(1) Following the performance hearing the panel must decide whether—

- (a) the senior officer has failed to make the required improvement in performance by the end of the final improvement period; or
  - (b) in a case where the required improvement in performance has been made by the end of that period, that improvement has been maintained until the end of the validity period.
- (2) Not later than 3 working days from the conclusion of the performance hearing the chairing member of the panel must give both the senior officer and the Authority written notice of—
- (a) the panel’s decision;
  - (b) the reasons for that decision; and
  - (c) any disposal ordered under regulation 36.
- (3) The Authority must deliver the notice given under paragraph (2) to the senior officer as soon as is practicable.
- (4) Where a disposal mentioned in regulation 36(1)(a) or (b) is ordered, the notice given under paragraph (2) must notify the senior officer of the right to appeal to a police appeals tribunal and the procedure for making such an appeal.

### **Disposal**

- 36.**—(1) If the panel decides under regulation 35(1) that the senior officer’s performance is unsatisfactory it must, subject to paragraphs (3) and (4), determine that the Authority is to—
- (a) dismiss the senior officer with notice;
  - (b) demote the senior officer in rank; or
  - (c) extend the final improvement notice.
- (2) In a case where it is determined that the Authority is to dismiss the senior officer with notice, the period of notice must be determined by the Authority, but must be not less than 28 days.
- (3) The final improvement notice may be extended only where the panel is satisfied that there are exceptional circumstances which justify such action.
- (4) If it is determined that the final improvement notice is to be extended—
- (a) that notice must be amended—
    - (i) to state that if the senior officer does not make a sufficient improvement in performance within such reasonable period as the panel specifies (being a period of no more than 6 months from the date of extension) the senior officer may be required to attend a further performance hearing; and
    - (ii) to specify a new validity period; and
  - (b) the terms of the final improvement notice may be amended which relate to—
    - (i) the respect in which the senior officer’s performance is considered to be unsatisfactory; or
    - (ii) the improvement that is required in the senior officer’s performance.

### **Assessment of performance following performance hearing**

- 37.**—(1) If the final improvement notice is extended by virtue of regulation 36(1)(c), the reporting officer must assess the senior officer’s performance—
- (a) at the end of extended final improvement period specified in that notice; and
  - (b) during any part of the validity period specified in that notice which continues after the end of the extended final improvement period.

(2) The reporting officer must inform the senior officer in writing as to whether, in the reporting officer's opinion—

- (a) there has been a sufficient improvement in the senior officer's performance by the end of the extended final improvement period; and
- (b) that improvement has been maintained until the end of the validity period.

(3) If the reporting officer is of the opinion that there has been a sufficient improvement in the senior officer's performance during the extended final improvement period, the reporting officer must remind the senior officer of the need to maintain that improvement until the end of the validity period.

(4) If, following an assessment under paragraph (1), the reporting officer is of the opinion that—

- (a) the senior officer has failed to make the required improvement in performance by the end of the extended final improvement period; or
- (b) where the required improvement in performance has been made by the end of that period, that improvement has not been maintained until the end of the validity period,

the reporting officer must refer the senior officer to a further performance hearing to consider the senior officer's performance.

(5) A further performance hearing may consider only—

- (a) the unsatisfactory performance referred to in the first improvement notice, the final improvement notice and the extended final improvement notice; and
- (b) unsatisfactory performance which is similar to or connected with the unsatisfactory performance referred to in those notices.

(6) Subject to paragraph (8), a further performance hearing must be conducted by the panel which conducted the performance hearing.

(7) If any member of the panel mentioned in paragraph (6) is unable to attend a further performance hearing the Authority may appoint a replacement in accordance with regulation 28.

(8) The Authority must arrange for the provision to every member of the panel mentioned in paragraph (6) or any replacement appointed under paragraph (7) of—

- (a) any document which was available to the reporting officer in relation to the performance meeting;
- (b) any document which was available to the person or panel conducting any performance appeal meeting;
- (c) any document which was available to the reporting officer in relation to the progress meeting;
- (d) any document which was available to the panel in relation to the performance hearing;
- (e) the records of the performance meeting, any performance appeal meeting, the progress meeting and the performance hearing;
- (f) any submission made under regulation 30; and
- (g) the first improvement notice, final improvement notice and extended final improvement notice.

### **Arrangement of further performance hearing**

**38.**—(1) If the reporting officer refers a senior officer to a further performance hearing, the Authority must send a notice in writing requiring the senior officer to attend such a hearing.

(2) A notice under paragraph (1) must inform the senior officer as to—

- (a) the membership of the panel;

- (b) the procedures for determining the date and time of the further performance hearing;
  - (c) the respect in which the senior officer's performance is considered to be unsatisfactory;
  - (d) the possible outcomes of a further performance hearing;
  - (e) the effect of regulation 30 (as modified by regulation 39);
  - (f) any proposed attendance at the hearing of the reporting officer;
  - (g) any proposed attendance at the hearing of any other named person and the senior officer's right to refuse to consent to their attendance;
  - (h) the senior officer's right to seek advice from a police representative;
  - (i) the senior officer's right to be represented at the hearing by a police representative; and
  - (j) the requirement to provide to the chairing member of the panel, in advance of the hearing, a copy of any document on which the senior officer intends to rely.
- (3) A notice under paragraph (1) must be accompanied by a copy of any document relied upon in coming to the view that the senior officer's performance is unsatisfactory.

#### **Application of Regulations to further performance hearing**

**39.** Regulations 30 and 32 to 36 apply in relation to a further performance hearing as they apply in relation to a performance hearing, subject to the following modifications:—

- (a) regulation 30(1) applies as if—
  - (i) for “29(1)” there were substituted “38(1)”; and
  - (ii) for “27(4)” there were substituted “37(4)”;
- (b) regulation 32 applies as if for “29(1)”, where it appears in paragraphs (1) and (7)(c)(i), there were substituted “38(1)”;
- (c) regulation 34(2)(b) applies as if for “29(2)(g)” there were substituted “38(2)(g)”;
- (d) regulation 35(1)(a) applies as if for “final improvement period”, there were substituted “extended final improvement period”; and
- (e) regulation 36 applies as if—
  - (i) paragraphs (1)(c), (3) and (4) were omitted; and
  - (ii) in paragraph (1) the words “subject to paragraphs (3) and (4)” were omitted.

## **PART 5**

### **Consequential amendments, etc.**

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

- 40.**—(1) The Police Appeals Tribunals (Scotland) Rules 2013(5) are amended as follows.
- (2) In rule 2 (interpretation)(6)—
- (a) in the appropriate places insert—
    - ““2013 Conduct Regulations” means the Police Service of Scotland (Conduct) Regulations 2013(7);”;

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(5) [S.S.I. 2013/63](#).

(6) Rule 2 has been amended by [S.S.I. 2014/67](#) and [S.S.I. 2014/68](#).

(7) [S.S.I. 2013/60](#).

““2013 Performance Regulations” means the Police Service of Scotland (Performance) Regulations 2013(8);”;

““2014 Conduct Regulations” means the Police Service of Scotland (Conduct) Regulations 2014(9);”;

““2014 Performance Regulations” means the Police Service of Scotland (Performance) Regulations 2014(10);”;

““performance hearing” means—

(a) in relation to the 2014 Performance Regulations—

- (i) a performance hearing to which a constable has been referred under regulation 31(4) of those Regulations; or
- (ii) a further performance hearing to which a constable has been referred under regulation 41(4) of those Regulations;

(b) in relation to the Senior Officers’ Performance Regulations—

- (i) a performance hearing to which a senior officer has been referred under regulation 27(4) of those Regulations; or
- (ii) a further performance to which a senior officer has been referred under regulation 37(4) of those Regulations;”;

““Senior Officers’ Performance Regulations” means the Police Service of Scotland (Senior Officers) (Performance) Regulations 2016;”;

(b) in the definition of “inefficiency hearing” for “the Performance Regulations” substitute “the 2013 Performance Regulations”; and

(c) omit the definitions of “Conduct Regulations” and “Performance Regulations”.

(3) In rule 5(3) (notice of appeal), for paragraph (b) substitute—

“(b) a copy of the disputed decision including (as the case may be)—

- (i) where the disputed decision was made under the 2013 Conduct Regulations, the misconduct form sent under regulation 23(4)(a) of those Regulations;
- (ii) where the disputed decision was made under the 2014 Conduct Regulations, a copy of the written notifications given under regulation 23(1) of those Regulations;
- (iii) where the disputed decision was made under the Senior Officers’ Conduct Regulations, a copy of the written notifications given under regulation 24(1) of those Regulations;
- (iv) where the disputed decision was made under the 2013 Performance Regulations, the written decision of the chairing constable of the inefficiency hearing under regulation 17 of those Regulations;
- (v) where the disputed decision was made under the 2014 Performance Regulations, any written notice under regulation 39(2) of those Regulations; and
- (vi) where the disputed decision was under the Senior Officers’ Performance Regulations, any written notice under regulation 35(2) of those Regulations; and”.

(4) In rule 6 (reply by respondent), for paragraph (2) substitute—

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

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(8) S.S.I. 2013/61.

(9) S.S.I. 2014/68.

(10) S.S.I. 2014/67.

- (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 2013 Conduct Regulations, a certified copy of—
  - (i) the misconduct form prepared under regulation 11(4)(a) of those Regulations in connection with the proceedings giving rise to the appeal;
  - (ii) the written note prepared and audio recording made under regulation 19(11) of those Regulations; and
  - (iii) the notice prepared under regulation 28(11) of those Regulations;
- (c) where the disputed decision was made under the 2014 Conduct Regulations, a certified copy of—
  - (i) the misconduct form sent under regulation 15(2) of those Regulations in connection with the proceedings giving rise to the appeal;
  - (ii) the audio recording made under regulation 18(5) or (as the case may be) the written record sent under regulation 18(6)(d) of those Regulations; and
  - (iii) the notice under regulation 26(2) of those Regulations;
- (d) where the disputed decision was made under the Senior Officers' Conduct Regulations, a certified copy of—
  - (i) the misconduct form sent under regulation 16(2) of those Regulations in connection with the proceedings giving rise to the appeal;
  - (ii) the audio recording made under regulation 19(5) or (as the case may be) the written record sent under regulation 19(6)(d) of those Regulations; and
  - (iii) the notice under regulation 26(9) of those Regulations;
- (e) where the disputed decision was made under the 2013 Performance Regulations, a certified copy of—
  - (i) the notice sent under regulation 14 of those Regulations;
  - (ii) the written note prepared under regulation 15(8) of those Regulations; and
  - (iii) the notice under regulation 22(6) of those Regulations recording the chief constable's determination;
- (f) where the disputed decision was made under the 2014 Performance Regulations, a certified copy of—
  - (i) the notice under regulation 33(1) of those Regulations;
  - (ii) the audio recording made under regulation 38(6) of those Regulations; and
  - (iii) the notice under regulation 46(3) of those Regulations;
- (g) where the disputed decision was made under the Senior Officers' Performance Regulations, a certified copy of—
  - (i) the notice under regulation 29(1) of those Regulations; and
  - (ii) the audio recording made under regulation 34(5) of those Regulations; and
- (h) any documentary evidence on which the respondent intends to rely for the purposes of opposing the appeal.”.

### The Police Service of Scotland Regulations 2013

**41.**—(1) Regulation 11 of the Police Service of Scotland Regulations 2013 (personal records)(**11**) is amended as follows.

(2) For paragraph (3)(d) substitute—

“(d) when the condition in paragraph (3A) is met, any record of proceedings (including any disposal made) taken against the constable under or by virtue of—

(i) the Police Service of Scotland (Performance) Regulations 2013;

(ii) the Police Service of Scotland (Performance) Regulations 2014; or

(iii) the Police Service of Scotland (Senior Officers) (Performance) Regulations 2016.”.

(3) After paragraph (3) insert—

“(3A) The condition mentioned in paragraph (3)(d) is that 2 years have elapsed since the date of the most recent action under those Regulations in relation to any proceedings taken against the constable or (as the case may be) senior officer.”.

#### **Revocation**

**42.** Regulation 23 (senior officer performance) of the Police Service of Scotland (Performance) Regulations 2013(**12**) is revoked.

St Andrew’s House,Edinburgh  
26th January 2016

*MICHAEL MATHESON*  
A member of the Scottish Government

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(11) S.S.I. 2013/35.

(12) S.S.I. 2013/61.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations provide for the procedures for dealing with cases where the performance of a constable of the Police Service of Scotland at or above the rank of assistant chief constable (a “senior officer”) is considered to be unsatisfactory.

Part 1 makes general provision. Regulations 1 to 3 make provision about the commencement, interpretation and application of the Regulations.

Regulation 4 sets out the representation to which a senior officer is entitled during the performance process. Regulation 5 specifies that meetings and hearings under these Regulations may take place when the senior officer does not attend and how the senior officer may be represented at those meetings and hearings.

Regulation 6 provides that the question of whether a senior officer’s performance is unsatisfactory is to be determined on a balance of probabilities.

Regulation 7 entitles the person conducting or chairing a meeting or hearing under these Regulations to consider documents notice of which has not been given in advance of that meeting or hearing.

Regulations 8 to 10 make provision about the “improvement periods” and “validity periods” to be specified in improvement notices given under these Regulations. Regulation 8 requires every improvement notice to specify an improvement period and a validity period. Those periods must be no more than 12 months (although a validity period may be extended beyond 12 months if the associated improvement period is extended – regulation 9(5)). A senior officer’s performance must improve by the end of the improvement period and that improvement must be maintained until the end of the validity period. Regulation 8 also makes provision about when a validity period must start and end and in particular provides that such a period must end on or after the date on which the associated improvement period ends.

Regulation 9 allows for improvement and validity periods to be extended. An extended improvement period must not exceed 12 months in total, while an extended validity period may exceed 12 months. Regulation 10 allows for improvement and validity periods to be suspended where the senior officer is absent from duty for 4 weeks or more.

Part 2 establishes the first stage in the performance process, known as “performance meetings”. Regulation 11 permits a senior officer’s reporting officer to refer the senior officer to such a meeting if the senior officer’s performance is considered to be unsatisfactory.

Where a senior officer is referred to a performance meeting, regulation 12 sets the process for arranging that meeting. The reporting officer must send a notice to the senior officer requiring attendance at the meeting specifying, among other things, the respect in which the senior officer’s performance is considered unsatisfactory. Regulation 12 also establishes a process for the senior officer and the reporting officer to agree a date and time for the meeting.

The procedure at a performance meeting is set out in regulation 13, including provision about who may attend that meeting, the right of the senior officer (and any person representing the senior officer) to make representations and notifying the senior officer of the decision as to whether the senior officer’s performance is unsatisfactory.

Regulation 14 provides for what is to happen following a performance meeting. In particular, the reporting officer must send a record of the meeting to the senior officer and, where the senior officer’s performance has been found to be unsatisfactory, prepare and send to the senior officer a

first improvement notice. The senior officer must also be informed of the right to appeal and the procedure for making an appeal. Regulation 15 makes provision about what must be contained in a first improvement notice.

The process for appealing the decision taken at a performance meeting is set out in regulation 16. That appeal may be made against the finding of unsatisfactory performance or against certain terms of the first improvement notice. Regulation 16 also sets out the grounds on which an appeal can be made and specifies that the appeal must be made by submission of a written appeal notice. Under regulation 17 an appeal made by an assistant chief constable must be determined by the chief constable and may be determined with or without holding an appeal meeting. Where a meeting is required, regulation 18 sets out the relevant procedure. Under regulation 19 an appeal by a deputy chief constable or the chief constable must be determined by a panel appointed by the Scottish Police Authority (“the Authority”) for that purpose and that regulation specifies who may be appointed to such a panel. Again, the appeal may be determined with or without a meeting. Where a meeting is required, regulation 20 sets out the relevant procedure. Regulation 21 sets out how all appeals are to be determined, including the evidence that the person determining the appeal must consider, what action may be taken where an appeal is upheld and what must be done after the determination of the appeal.

Part 3 makes provision about the monitoring of the senior officer’s performance following the first stage in the process.

Regulation 22 requires the senior officer’s reporting officer, at the end of the first improvement and validity periods, to decide whether the senior officer’s performance has been satisfactory during those periods. If it has not been satisfactory, the senior officer must be referred to a progress meeting to consider the matter further.

Regulation 23 makes provision as to how the progress meeting is to be arranged. Regulations 24 and 25 make provision as to the procedure at and following that meeting respectively. The process is broadly similar to that for performance meetings.

Where, at a progress meeting, a senior officer’s performance is considered to be unsatisfactory, a final improvement notice must be given. The content of that notice is specified in regulation 26.

Part 4 sets out what is to happen at the end of the improvement and validity periods set out in the final improvement notice. Regulation 27 requires the senior officer’s reporting officer to assess the senior officer’s performance at the end of the final improvement period and validity period specified in the final improvement notice. If the senior officer’s performance has been unsatisfactory, the reporting officer must refer the senior officer to a performance hearing.

Regulation 28 requires the Authority to appoint a panel to conduct a performance hearing. The membership of the panel will differ depending on whether the senior officer in question is an assistant chief constable, a deputy chief constable or the chief constable and regulation 28 makes detailed provision about who must be appointed to sit on each panel.

Regulation 29 provides that the Authority must send a written notice requiring the senior officer to attend a performance hearing. Not more than 20 working days from receipt of that notice, the senior officer must respond in writing indicating whether it is accepted that the senior officer’s performance has been unsatisfactory (regulation 30). Regulation 31 sets out a process for agreeing a list of witnesses to appear at the performance hearing and regulation 32 details the timescales within which such a hearing must take place. A performance hearing may be postponed or adjourned by the chairing member of the panel in accordance with regulation 33.

Regulation 34 specifies who may attend a performance hearing and requires the senior officer, or a person representing the senior officer, to be given the opportunity to make representations.

At the end of the performance hearing the panel must decide whether or not the senior officer’s performance is unsatisfactory and give written notice of that decision and any disposal ordered

(regulation 35). Regulation 36 sets out the disposals available which include dismissal, demotion and extension of the final improvement notice.

Regulation 37 sets out a further process for assessment of the senior officer's performance where a final improvement notice has been extended. This includes referral to a further performance hearing where the senior officer's performance remains unsatisfactory. The arrangement of and procedure at a further performance hearing are set out in regulations 38 and 39 and are similar to those relating to an initial performance hearing.

Part 5 makes a number of consequential and other minor amendments to the Police Appeals Tribunal (Scotland) Rules 2013 and the Police Service of Scotland Regulations 2013, as well as revoking regulation 23 of the Police Service of Scotland (Performance) Regulations 2013.