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SCOTTISH STATUTORY INSTRUMENTS

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**2016 No. 51**

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

**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(1);

(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’s 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<sup>(2)</sup>; 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)<sup>(3)</sup>.

(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.

### **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.

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(2) [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](#)).

(3) [2000 c.7](#). Section 15 has been amended by Schedule 17 to the Communications Act 2003 ([c.21](#)).

(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.