

POLICY NOTE

THE POLICE SERVICE OF SCOTLAND (SENIOR OFFICERS) (PERFORMANCE) REGULATIONS 2016

SSI 2016/51

1. The above instrument was made in exercise of the powers conferred under sections 48 and 125(1) of the Police and Fire Reform (Scotland) Act 2012 (“the 2012 Act”). This instrument is subject to the negative procedure.

Policy Objectives

2. The Police Service of Scotland (Senior Officers) (Performance) Regulations 2016 (“the 2016 Regulations”) create a process for managing the performance of senior officers (those of the rank of assistant chief constable and above) where their performance is found to be unsatisfactory. The underlying principle of the regulations is that they will provide a fair, open and proportionate process for dealing with performance and attendance issues and to encourage a culture of learning and development.

3. In introducing these procedures, the Scottish Police Authority (SPA) and the reporting officer (line manager) will have responsibility for managing performance through informal action, before invoking the formal procedures set out in the regulations. These procedures should help the senior officer to reach the standards of performance required in the senior ranks. A separate guidance document will be produced by the SPA that will set out the principles behind the regulatory processes and the detail regarding the procedures to be followed. The SPA guidance will be prepared in consultation with the main policing stakeholders.

4. The 2016 Regulations define unsatisfactory performance as:
“an inability or failure of the senior officer to perform the duties of the senior officer’s role or rank (or both) to a satisfactory standard.”

5. While the basic procedures and disposals set out in the 2016 Regulations mirror the performance regulations for those in the ranks below assistant chief constable (the Police Service of Scotland (Performance) Regulations 2014), there are some differences in the performance and appeal procedures to reflect the small number of officers in the senior ranks within the Police Service of Scotland and the overall management of the performance process by the SPA.

6. The SPA is responsible for the appointment and dismissal of senior officers, therefore the procedures set out in these regulations will be managed by them.

7. The key procedures established by these regulations are described in the following paragraphs.

8. Part 1 sets out the general provisions and interpretations for the regulations. As with the regulations for other ranks, these regulations give a senior officer the opportunity to choose a police representative who can advise the senior officer throughout the proceedings and can make representations on the senior officer’s behalf at any meeting or hearing.

9. Part 2 sets out the initial procedures to be followed when a senior officer has displayed unsatisfactory performance. This includes the arrangements for a performance meeting to be conducted by the senior officer's reporting officer. If there is evidence of unsatisfactory performance, the reporting officer must set out the specific action required to achieve an improvement in performance. An improvement period must be specified within which the senior officer's performance is to improve and a validity period must be set, giving a period in which improved performance must be maintained.

10. The senior officer has a right to appeal against the finding and outcome of a performance meeting. The person or panel hearing the appeal can reverse or vary the reporting officer's finding of unsatisfactory performance.

11. Part 3 sets out that the reporting officer must consider the senior officer's performance at the end of the improvement period and during the validity period. If the senior officer has failed to make the required improvement the senior officer will be informed that a progress meeting, conducted by the reporting officer, will be held.

12. If there is evidence of unsatisfactory performance at the progress meeting the reporting officer must set a final improvement period, within which the senior officer's performance is to improve, and a final validity period must be set giving a period in which improved performance must be maintained.

13. Part 4 establishes the process for a performance hearing. The reporting officer must consider the senior officer's performance at the end of the final improvement period and during the final validity period. If the senior officer has failed to make the required improvement the reporting officer must refer the senior officer to a performance hearing.

14. At a performance hearing a panel considers whether the senior officer's performance has improved. If the panel find that the senior officer's performance has not improved satisfactorily, they can decide whether the senior officer should be dismissed or demoted in rank. In exceptional circumstances, the panel can also extend a final improvement period. This would give the senior officer another opportunity to show improved performance before the matter is heard at a further performance hearing.

15. The membership of the hearing panel differs for each rank of officer. This allows the SPA to manage the appeal process in a fair and open manner. Each panel will include a member who provides independent scrutiny of the evidence and process and the regulations provide for a list of excluded persons, preventing members of the SPA, their staff, or constables from the Police Service of Scotland from undertaking this role.

16. Following the performance hearing the panel will give notice to the SPA of their decision regarding the performance of the senior officer. If the panel are of the view that the senior officer's performance remains unsatisfactory, they must provide a disposal to either dismiss or demote the senior officer. Under these circumstances, the senior officer can then choose to appeal to the Police Appeals Tribunal.

Consultation

17. Key policing stakeholders have been part of a working group to discuss and agree the main policy within the regulations.

18. In accordance with section 54(2) of the 2012 Act, a draft of the Regulations was issued for consultation to the range of policing stakeholders listed below, from 28 October 2015 to 27 November 2015.

- Association of Scottish Police Superintendents
- Chief Constable of the Police Service of Scotland
- Gay Police Association
- National Transgender Policing Association
- Scottish Chief Police Officers' Staff Association
- Scottish Police Authority
- Scottish Police Federation
- Scottish Police Muslim Association
- Scottish Women's Development Forum
- SEMPER Scotland

19. The Scottish Ministers have taken account of the representations made in preparing these regulations.

Impacts

20. No financial or equality issues were raised during the consultation, or the process of policy development, which required an impact assessment to be prepared for these regulations.

Scottish Government
Safer Communities Directorate
January 2016