

Draft Regulations laid before Parliament under section 84(9) of the Police Act 1996, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2008 No.

POLICE, ENGLAND AND WALES

The Police (Performance) Regulations 2008

Made - - - - 2008
Coming into force - - 1st December 2008

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 50, 51 and 84 of the Police Act (1).

In accordance with section 63(3)(2) of that Act, she has supplied the Police Advisory Board for England and Wales with a draft of these Regulations and has taken into consideration the representations of that Board.

In accordance with section 84(9)(3) of that Act, a draft of these Regulations was laid before Parliament and approved by a resolution of each House of Parliament.

PART 1

Preliminary

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Police (Performance) Regulations 2008 and shall come into force on 1st December 2008.

(2) These Regulations extend to England and Wales.

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- (1) 1996 c.16. Section 50 was amended by paragraph 95 of Schedule 27 to the Greater London Authority Act 1999 (c.29) and section 125 of the Criminal Justice and Police Act 2001 (c.16). It is also amended by paragraph 3 of Schedule 22 to the Criminal Justice and Immigration Act 2008 (c.4). Section 51 was amended by section 128 of the Police Act 1997 (c.50) and section 35 of the Police Reform Act 2002 (c.30). It is also amended by paragraph 4 of Schedule 22 to the Criminal Justice and Immigration Act 2008. Section 84 was amended by section 125 of the Criminal Justice and Police Act 2001 and paragraph 119 of Schedule 21 to the Legal Services Act 2007 (c.29). It is also amended by paragraph 7 of Schedule 22 to the Criminal Justice and Immigration Act 2008.
- (2) Relevant amendments to section 63 were made by paragraph 78 of Schedule 4 to the Serious Organised Crime and Police Act 2005 (c. 15). Section 63 is also amended by paragraph 6 of Schedule 22 to the Criminal Justice and Immigration Act 2008.
- (3) Section 84(9) is inserted by paragraph 7 of Schedule 22 to the Criminal Justice and Immigration Act 2008.

Application

2. These Regulations shall not apply in relation to—
- (a) a member of a police force above the rank of chief superintendent;
 - (b) an officer of the rank of constable who has not completed his period of probation.

Revocation and transitional provisions

- 3.—(1) Subject to paragraph (2), the following Regulations are revoked—
- (a) the Police (Efficiency) Regulations 1999(4);
 - (b) the Police (Efficiency) (Amendment) Regulations 2003(5); and
 - (c) the Police (Efficiency) (Amendment No.2) Regulations 2003(6).

(2) Where unsatisfactory performance or attendance by a police officer came to the attention of the line manager for such officer before 1st December 2008, nothing in these Regulations shall apply and the Regulations mentioned in paragraph (1) shall continue to have effect.

Interpretation and delegation

- 4.—(1) In these Regulations—
- “the 1996 Act” means the Police Act 1996;
- “the Police Regulations” means the Police Regulations 2003(7);
- “appropriate authority” means the chief officer of police of the police force concerned;
- “bank holiday” means a day which is a bank holiday under the Banking and Financial Dealings Act 1971(8) in England and Wales;
- “document” means anything in which information of any description is recorded and includes any recording of a visual image or images;
- “first stage appeal meeting” has the meaning assigned to it by regulation 16;
- “first stage meeting” has the meaning assigned to it by regulation 12;
- “gross incompetence” and cognate expressions mean a serious inability or serious failure of a police officer to perform the duties of his rank or the role he is currently undertaking to a satisfactory standard or level, to the extent that dismissal would be justified, except that no account shall be taken of the attendance of a police officer when considering whether he has been grossly incompetent;
- “human resources professional” means a police officer or police staff member who has specific responsibility for personnel matters relating to members of a police force;
- “interested party” means a person whose appointment could reasonably give rise to a concern as to whether he could act impartially under these Regulations;
- “line manager” means the police officer or the police staff member who, in either case, has immediate supervisory responsibility for the officer concerned;
- “nominated person” means a person appointed by the senior manager in accordance with regulation 9;

(4) S.I. 1999/732.

(5) S.I. 2003/528.

(6) S.I. 2003/2600.

(7) S.I. 2003/527. The relevant amending instrument is S.I. 2006/3449.

(8) 1971 c.80.

“officer concerned” means the police officer in respect of whom proceedings under these Regulations are, or are proposed to be, taken;

“panel” means a panel appointed by the appropriate authority in accordance with regulation 30 subject to any change to the membership of that panel in accordance with regulation 31 and to the provisions of regulations 40 and 41;

“panel chair” means the chair of the panel;

“police force concerned” means—

- (a) where the officer concerned is a member of a police force, the police force of which he is a member; and
- (b) where the officer concerned is a special constable, the police force maintained for the police area for which he is appointed;

“police friend” means a person chosen by the officer concerned in accordance with regulation 5;

“police officer” means a member of a police force or a special constable;

“police staff member” means an employee of a police authority who is under the direction and control of a chief officer of police;

“proposed witness” means a witness whose attendance at a third stage meeting the officer concerned or the appropriate authority (as the case may be) wishes to request of the panel chair;

“relevant lawyer” has the same meaning as in section 84(4) of the 1996 Act, subject to the provisions of paragraph 35 of Schedule 27 to the Criminal Justice and Immigration Act 2008;

“relevant terms of the final written improvement notice” has the meaning assigned to it by regulation 23;

“relevant terms of the written improvement notice” has the meaning assigned to it by regulation 16;

“second line manager” means the person appointed by the appropriate authority to act as the second line manager for the purposes of these Regulations in relation to the officer concerned and who is either—

- (a) a member of the police force concerned having supervisory responsibility for the line manager and who (in a case where the line manager is a member of the force) is senior in rank to the line manager, or
- (b) a police staff member who has supervisory responsibility for the line manager;

“second stage appeal meeting” has the meaning assigned to it by regulation 23;

“second stage meeting” has the meaning assigned to it by regulation 19;

“senior manager” means—

- (c) the police officer or police staff member who is for the time being the supervisor of the person who is, in relation to the officer concerned, the second line manager; or
- (d) in the absence of such supervisor, the police officer or police staff member nominated by the appropriate authority to carry out any of the functions of such supervisor under these Regulations, being of at least the same rank (or equivalent) as the person who is, in relation to the officer concerned, the second line manager;

“senior officer” means a member of a police force holding a rank above that of chief superintendent;

“staff association” means—

- (e) in relation to a member of a police force of the rank of chief inspector or below, the Police Federation of England and Wales; and

- (f) in relation to a member of a police force of the rank of superintendent or chief superintendent, the Police Superintendents' Association of England and Wales;
“third stage meeting” has the meaning assigned to it by regulations 26 and 28;
“unsatisfactory performance procedures” means the procedures set out in these Regulations;
“validity period” has the meaning assigned to it by regulations 15(4), 22(4), 38(6)(d) and (7) (c); and
“working day” means any day other than a Saturday or a Sunday or a day which is a bank holiday or a public holiday in England and Wales.
- (2) In these Regulations—
- (a) references to—
- (i) unsatisfactory performance or attendance;
- (ii) the performance or attendance of an officer being unsatisfactory,
- mean an inability or failure of a police officer to perform the duties of the role or rank he is currently undertaking to a satisfactory standard or level;
- (b) “unsatisfactory performance or attendance” may be construed as a reference to unsatisfactory performance and attendance;
- (c) “performance or attendance” may be construed as a reference to performance and attendance.
- (3) The appropriate authority may, subject to paragraph (4), delegate any of its functions under these Regulations to—
- (a) a member of a police force of at least the rank of chief inspector; or
- (b) a police staff member who, in the opinion of the appropriate authority is of at least a similar level of seniority to a chief inspector.
- (4) Where the appropriate authority delegates its functions under regulation 28, the decisions shall be authorised by a senior officer.
- (5) Any proceedings under these Regulations are disciplinary proceedings for the purposes of section 87 of the 1996 Act (guidance concerning disciplinary proceedings)(9).

PART 2

General

Police friend

- 5.—(1) The officer concerned may choose—
- (a) a police officer;
- (b) a police staff member; or
- (c) where the officer concerned is a member of a police force, a person nominated by his staff association,
- who is not otherwise involved in the matter, to act as his police friend.
- (2) A police friend may—
- (a) advise the officer concerned throughout the proceedings under these Regulations;

(9) Section 87 was amended by paragraph 18 of Schedule 7 to the Police Reform Act 2002. It is also amended by paragraph 9 of Schedule 22 to the Criminal Justice and Immigration Act 2008.

- (b) unless the officer concerned has the right to be legally represented under regulation 6 and chooses to be so represented, represent the officer concerned at a meeting under these Regulations;
- (c) make representations to the appropriate authority concerning any aspect of the proceedings under these Regulations; and
- (d) accompany the officer concerned to any meeting which the officer concerned is required to attend under these Regulations.

(3) Where a police friend is a police officer or a police staff member, the chief officer of police of the force of which the police friend is a member shall permit him to use a reasonable amount of duty time for the purposes referred to in paragraph (2).

(4) The reference in paragraph (3) to the force of which the police friend is a member shall include a reference to the force maintained for the police area for which a special constable is appointed and the force in which a police staff member is serving.

Legal representation

6.—(1) Where a police officer is required to attend a third stage meeting under regulation 28, he has the right to be legally represented at such meeting by a relevant lawyer of his choice.

(2) If such an officer chooses not to be legally represented—

- (a) such meeting may take place and he may be dismissed or receive any other outcome under regulation 38(2) or (5) without his being legally represented; and
- (b) the panel conducting such meeting may nevertheless be advised by a relevant lawyer at the meeting in accordance with regulation 36(4).

(3) Except in a case where the officer concerned has the right to be legally represented and chooses to be so represented, he may be represented at a meeting under these Regulations only by a police friend.

(4) A third stage meeting under regulation 28 shall not take place unless the officer concerned has been notified in writing of the effect of this regulation.

Provision of notices or documents

7. Where any written notice or document is to be given or supplied to the officer concerned under these Regulations, it shall be—

- (a) given to him in person; or
- (b) left with some person at, or sent by recorded delivery to, his last known address.

Procedure at meetings under these Regulations

8.—(1) Where the officer concerned does not attend a meeting under these Regulations or where the officer concerned participates in a third stage meeting by video link or other means under regulation 34(9), he may nonetheless be represented at that meeting by his—

- (a) police friend; or
- (b) where the officer is required to attend the third stage meeting under regulation 28, his relevant lawyer.

(2) Where the officer concerned does not attend a meeting under these Regulations or participate in a third stage meeting by video link or other means under regulation 34(9), the meeting may be proceeded with and concluded in the absence of the officer concerned whether or not he is so represented.

(3) During any meeting under these Regulations, the person representing the officer concerned may—

- (a) address the meeting in order to do any or all of the following—
 - (i) put the case of the officer concerned;
 - (ii) sum up that case;
 - (iii) respond on behalf of the officer concerned to any view expressed at the meeting;
 - (iv) make representations concerning any aspect of proceedings under these Regulations; and
 - (v) in the case of a third stage meeting only, subject to paragraph (7), ask questions of any witnesses;
- (b) confer with the officer concerned.

(4) Where the person representing the officer concerned is a relevant lawyer, the police friend of the officer concerned may also confer with the officer concerned.

(5) Where the officer concerned is participating in a third stage meeting by video link or other means in accordance with regulation 34(9), the person representing the officer or (if different) his police friend (or both) may also participate in the third stage meeting by such means together with the officer concerned.

(6) The police friend or relevant lawyer of the officer concerned may not answer any questions asked of the officer concerned during a meeting.

(7) Whether any question should or should not be put to a witness at a third stage meeting shall be determined by the panel chair.

(8) At any meeting under these Regulations, the person or the panel conducting the meeting shall not make a finding of unsatisfactory performance or attendance or gross incompetence unless—

- (a) he is or they are satisfied on the balance of probabilities that there has been unsatisfactory performance or attendance or gross incompetence; or
- (b) the officer concerned consents to such a finding.

(9) The person conducting or chairing a meeting under these Regulations may allow any document to be considered at that meeting notwithstanding that a copy of it has not been—

- (a) supplied to him by the officer concerned in accordance with regulation 13(8), 16(6)(b), 20(8), 23(6)(b) or 32(3);
- (b) supplied to the officer concerned in accordance with regulation 13(2), 20(2), 27(2) or 29(2); or
- (c) made available to each panel member or given to the officer concerned under regulation 30(11).

Nominated persons

9.—(1) A senior manager may appoint another person (a “nominated person”) to carry out any of the functions of the line manager or the second line manager in these Regulations.

(2) Where a person is appointed to carry out any of the functions of the line manager under paragraph (1) he may not also be appointed to carry out any of the functions of the second line manager under that paragraph.

(3) Where a person is appointed to carry out any of the functions of the second line manager under paragraph (1) he may not also be appointed to carry out any of the functions of the line manager under that paragraph.

(4) A nominated person shall be a member of the police force concerned or a police staff member in the police force concerned and shall be, in the opinion of the appropriate authority, of at least the same or equivalent rank or grade as the person whose functions he is carrying out.

(5) Where a nominated person is appointed by the senior manager, references in these Regulations to a line manager or a second line manager, as the case may be, shall be construed as references to the nominated person, in relation to the functions which the nominated person has been appointed to carry out.

References to certain periods

10.—(1) The appropriate authority may, on the application of the officer concerned or otherwise, extend the period specified in accordance with any of the regulations mentioned in paragraph (2) if it is satisfied that it is appropriate to do so.

(2) The regulations mentioned in this paragraph are—

- (a) regulation 14(6)(c);
- (b) regulation 21(6)(c); and
- (c) regulation 38(6)(c) and (7)(a).

(3) Unless the appropriate authority is satisfied that there are exceptional circumstances making it appropriate, any such period may not be extended if the extension would result in the total length of that period exceeding 12 months.

(4) Where an extension is granted under paragraph (1) to a period specified under a regulation mentioned in paragraph (2), any reference in these Regulations to such period shall be construed as a reference to that period as so extended.

Suspension of certain periods

11.—(1) Any reference in these Regulations to a period mentioned in paragraph (2) shall not include any time the officer concerned is taking a career break under regulation 33(12) of the Police Regulations (leave) and the determination of the Secretary of State made under that regulation.

(2) The periods mentioned in this paragraph are—

- (a) a period specified in accordance with regulation 14(6)(c);
- (b) the validity period of a written improvement notice;
- (c) a period specified in accordance with regulation 21(6)(c);
- (d) the validity period of a final written improvement notice;
- (e) a period specified under regulation 38(6)(c) or (7)(a);
- (f) the validity period of a final written improvement notice extended under regulation 38.

PART 3

First stage

Circumstances in which a first stage meeting may be required

12. Where the line manager for a police officer considers that the performance or attendance of that officer is unsatisfactory, he may require the officer concerned to attend a meeting (in these Regulations referred to as a first stage meeting) to discuss the performance or attendance of the officer concerned.

Arrangement of first stage meeting

13.—(1) If the line manager wishes to require a police officer to attend a first stage meeting, he shall give a notice in writing to the officer concerned—

- (a) requiring him to attend a first stage meeting of the unsatisfactory performance procedures with the line manager;
- (b) informing him of the procedures for determining the date and time of the meeting under paragraphs (3) to (6);
- (c) summarising the reasons why his performance or attendance is considered unsatisfactory;
- (d) informing him of the possible outcomes of a first stage meeting, a second stage meeting and a third stage meeting;
- (e) informing him that a human resources professional or a police officer may attend the meeting to advise the line manager on the proceedings;
- (f) informing him that, if he consents, any other person specified in the notice may attend the meeting;
- (g) where the officer concerned is a member of a police force, informing him that he may seek advice from a representative of his staff association;
- (h) informing him that he may be accompanied and represented at the meeting by a police friend; and
- (i) informing him that he must provide to the line manager in advance of the meeting a copy of any document he intends to rely on at the meeting.

(2) Such notice shall be accompanied by a copy of any document relied upon by the line manager when coming to his view mentioned in regulation 12 that the performance or attendance of the officer concerned is unsatisfactory.

(3) The line manager shall, if reasonably practicable, agree a date and time for the meeting with the officer concerned.

(4) Where no date and time is agreed under paragraph (3), the line manager shall specify a date and time for the meeting.

(5) Where a date and time is specified under paragraph (4) and—

- (a) the officer concerned or his police friend will not be available at that time; and
- (b) the officer concerned proposes an alternative time which satisfies paragraph (6),

the meeting must be postponed to the time proposed by the officer concerned.

(6) An alternative time must—

- (a) be reasonable; and
- (b) fall before the end of five working days beginning with the first working day after the day specified by the line manager under paragraph (4).

(7) The line manager shall give to the officer concerned a notice in writing of the date and time of the first stage meeting determined in accordance with paragraphs (3) to (6) and of the place of the meeting.

(8) In advance of the first stage meeting, the officer concerned shall provide the line manager with a copy of any document he intends to rely on at the meeting.

Procedure at first stage meeting

14.—(1) The following provisions of this regulation apply to the procedure to be followed at the first stage meeting.

- (2) The meeting shall be conducted by the line manager.
- (3) A human resources professional or a police officer may attend the meeting to advise the line manager on the proceedings.
- (4) Any other person specified in the notice referred to in regulation 13(1) may attend the meeting if the officer concerned consents to such attendance.
- (5) The line manager shall—
 - (a) explain to the officer concerned the reasons why the line manager considers that the performance or attendance of the officer concerned is unsatisfactory;
 - (b) provide the officer concerned with an opportunity to make representations in response;
 - (c) provide his police friend (if he has one) with an opportunity to address the meeting in accordance with regulation 8(3)(a).
- (6) If, after considering any representations made in accordance with paragraph (5)(b) or (c), the line manager finds that the performance or attendance of the officer concerned has been unsatisfactory, he shall—
 - (a) inform the officer concerned in what respect his performance or attendance is considered unsatisfactory;
 - (b) inform the officer concerned of the improvement that is required in his performance or attendance;
 - (c) inform the officer concerned that, if a sufficient improvement is not made within such reasonable period as the line manager shall specify (being a period not greater than 12 months), he may be required to attend a second stage meeting in accordance with regulation 19 and the line manager shall specify the date on which this period ends;
 - (d) inform the officer concerned that he will receive a written improvement notice; and
 - (e) inform the officer concerned that if the sufficient improvement referred to in sub-paragraph (c) is not maintained during any part of the validity period of such notice remaining after the expiry of the period specified in accordance with sub-paragraph (c), he may be required to attend a second stage meeting in accordance with regulation 19.
- (7) The line manager may, if he considers it appropriate, recommend that the officer concerned seeks assistance in relation to any matter affecting his health or welfare.
- (8) The line manager may postpone or adjourn the meeting to a specified later time or date if it appears to him necessary or expedient to do so.

Procedure following first stage meeting

- 15.**—(1) The line manager shall, as soon as reasonably practicable after the date of the conclusion of the first stage meeting—
- (a) cause to be prepared a written record of the meeting; and
 - (b) where he found at the meeting that the performance or attendance of the officer concerned has been unsatisfactory, cause to be prepared a written improvement notice.
- (2) Where the officer concerned has failed to attend a first stage meeting, if the line manager finds that the performance or attendance of the officer has been unsatisfactory, he shall as soon as reasonably practicable—
- (a) cause to be prepared a written improvement notice; and
 - (b) if the police friend of the officer concerned attended the meeting, cause to be prepared a written record of the meeting.
- (3) A written improvement notice shall—

- (a) record the matters of which the officer concerned was informed (or would have been informed had he attended the meeting) under sub-paragraphs (a) to (c) and (e) of regulation 14(6);
 - (b) state the period for which it is valid; and
 - (c) be signed and dated by the line manager.
- (4) A written improvement notice shall be valid for a period of twelve months from the date of the notice (the “validity period”).
- (5) The line manager shall give a copy of any written record and any written improvement notice to the officer concerned as soon as reasonably practicable after they have been prepared.
- (6) Where the line manager found that the performance or attendance of the officer concerned has been unsatisfactory and has caused to be prepared a written improvement notice, he shall, at the same time as supplying the documents mentioned in paragraph (5), notify the officer concerned in writing of the matters set out in regulation 16, of the name of the person to whom a written notice of appeal must be given under that regulation, of his entitlements under paragraphs (7) and (8) and of the effect of paragraph (9).
- (7) Subject to paragraphs (8) and (9), the officer concerned shall be entitled to submit written comments on any written record to the line manager before the end of 7 working days beginning with the first working day after the day on which the copy is received by the officer concerned.
- (8) The line manager may, on the application of the officer concerned, extend the period specified in paragraph (7) if he is satisfied that it is appropriate to do so.
- (9) The officer concerned shall not be entitled to submit written comments on the written record if he has exercised his right to appeal under regulation 16.
- (10) The line manager shall ensure that any written record, any written improvement notice and any written comments of the officer concerned on the written record are retained together and filed.

Appeal against the finding and outcome of a first stage meeting

- 16.**—(1) This regulation applies where, at the first stage meeting, the line manager found that the performance or attendance of the officer concerned has been unsatisfactory.
- (2) Where this regulation applies, the officer concerned may appeal against—
- (a) such finding; or
 - (b) any of the matters specified in paragraph (3) and recorded in the written improvement notice (in these Regulations referred to as the relevant terms of the written improvement notice),
or both.
- (3) The matters specified in this paragraph are—
- (a) the respect in which the performance or attendance of the officer concerned is considered unsatisfactory;
 - (b) the improvement that is required in his performance or attendance;
 - (c) the length of the period specified by the line manager in accordance with regulation 14(6) (c).
- (4) The only grounds of appeal under this regulation are—
- (a) that the finding of unsatisfactory performance or attendance was unreasonable;
 - (b) that any of the relevant terms of the written improvement notice are unreasonable;

- (c) that there is evidence that could not reasonably have been considered at the first stage meeting which could have materially affected the finding of unsatisfactory performance or attendance or any of the relevant terms of the written improvement notice;
 - (d) that there was a breach of the procedures set out in these Regulations or other unfairness which could have materially affected the finding of unsatisfactory performance or attendance or any of the relevant terms of the written improvement notice.
- (5) Any appeal shall be commenced by the officer concerned giving written notice of appeal to the second line manager before the end of 7 working days beginning with the first working day after receipt of the documents referred to in regulation 15(5).
- (6) Such notification must—
- (a) set out the grounds of appeal of the officer concerned; and
 - (b) be accompanied by any evidence on which the officer concerned relies.
- (7) The second line manager may, on the application of the officer concerned, extend the period specified in paragraph (5) if he is satisfied that it is appropriate to do so.
- (8) Subject to paragraph (9), the meeting at which the appeal will be heard (referred to in these Regulations as the first stage appeal meeting) shall take place before the end of 7 working days beginning with the first working day after the day on which the notification under paragraph (5) is received by the second line manager.
- (9) A first stage appeal meeting may take place after the period of 7 working days referred to in paragraph (8) if the second line manager considers it necessary or expedient, in which case he shall notify the officer concerned of his reasons in writing.

Arrangement of first stage appeal meeting

17.—(1) As soon as reasonably practicable after receipt by the second line manager of the notification of appeal referred to in regulation 16(5), the second line manager shall give a notice in writing to the officer concerned—

- (a) informing him of the procedures for determining the date and time of the meeting under paragraphs (2) to (5);
 - (b) informing him that a human resources professional or a police officer may attend the meeting to advise the second line manager on the proceedings;
 - (c) informing him that, if he consents, any other person specified in the notice may attend the meeting;
 - (d) where the officer concerned is a member of a police force, informing him that he may seek advice from a representative of his staff association; and
 - (e) informing him that he may be accompanied and represented at the meeting by a police friend.
- (2) The second line manager shall, if reasonably practicable, agree a date and time for the meeting with the officer concerned.
- (3) Where no date and time is agreed under paragraph (2), the second line manager shall specify a date and time for the meeting.
- (4) Where a date and time is specified under paragraph (3) and—
- (a) the officer concerned or his police friend will not be available at that time; and
 - (b) the officer concerned proposes an alternative time which satisfies paragraph (5),
- the meeting must be postponed to the time proposed by the officer concerned.

- (5) An alternative time must—

- (a) be reasonable; and
 - (b) fall before the end of five working days beginning with the first working day after the day specified by the second line manager under paragraph (3).
- (6) The second line manager shall give to the officer concerned a notice in writing of the date and time of the first stage appeal meeting determined in accordance with paragraphs (2) to (5) and of the place of the meeting.

Procedure at first stage appeal meeting

18.—(1) The following provisions of this regulation apply to the procedure to be followed at a first stage appeal meeting.

- (2) The meeting shall be conducted by the second line manager.
- (3) A human resources professional or a police officer may attend the meeting to advise the second line manager on the proceedings.
- (4) Any other person specified in the notice referred to in regulation 17(1) may attend the meeting if the officer concerned consents to such attendance.
- (5) The second line manager shall—
 - (a) provide the officer concerned with an opportunity to make representations; and
 - (b) provide his police friend (if he has one) with an opportunity to address the meeting in accordance with regulation 8(3)(a).
- (6) After considering any representations made in accordance with paragraph (5), the second line manager may—
 - (a) confirm or reverse the finding of unsatisfactory performance or attendance;
 - (b) confirm or vary the relevant terms of the written improvement notice appealed against.
- (7) Where the second line manager has reversed the finding of unsatisfactory performance or attendance, he shall also revoke the written improvement notice.
- (8) The second line manager may postpone or adjourn the meeting to a specified later time or date if it appears to him necessary or expedient to do so.
- (9) As soon as reasonably practicable after the conclusion of the meeting, the officer concerned shall be given written notice of the second line manager's decision and a written summary of the reasons for that decision, but in any event, the officer concerned shall be given written notice of the decision before the end of three working days beginning with the first working day after the conclusion of the meeting.
- (10) Where the second line manager has—
 - (a) reversed the finding of unsatisfactory performance or attendance and revoked the written improvement notice; or
 - (b) varied any of the relevant terms of the written improvement notice,

the decision of the second line manager shall take effect by way of substitution for the finding, the written improvement notice issued or the relevant terms of the written improvement notice appealed against from the date of the first stage meeting.

PART 4

Second stage

Circumstances in which a second stage meeting may be required

19.—(1) Where a police officer has received a written improvement notice, as soon as reasonably practicable after the date on which the period specified in accordance with regulation 14(6)(c) ends—

- (a) the line manager shall assess the performance or attendance of the officer concerned during that period, in consultation with the second line manager or a human resources professional (or both); and
- (b) the line manager shall notify the officer concerned in writing whether the line manager considers that there has been a sufficient improvement in performance or attendance during that period.

(2) If the line manager considers that there has not been a sufficient improvement, he shall, at the same time as he gives notification under paragraph (1)(b), also notify the officer concerned in writing that he is required to attend a meeting (in these Regulations referred to as a second stage meeting) to consider his performance or attendance.

(3) Where—

- (a) the officer concerned has not been required to attend a second stage meeting under paragraph (2), or
- (b) the officer concerned has been required to attend a second stage meeting under paragraph (2) but the second line manager did not make a finding of unsatisfactory performance or attendance at that meeting,

the officer concerned may be required to attend a second stage meeting under paragraph (4).

(4) If the line manager considers that the officer concerned has failed to maintain a sufficient improvement in his performance or attendance during any part of the validity period of the written improvement notice remaining after the expiry of the period specified in accordance with regulation 14(6)(c), he shall notify the officer concerned in writing of the matters set out in paragraph (5).

(5) Those matters are—

- (a) that he is of the view mentioned in paragraph (4); and
- (b) that the officer concerned is required to attend a meeting (in these Regulations referred to as a second stage meeting) to consider his performance or attendance.

(6) Any second stage meeting which a police officer is required to attend must concern unsatisfactory performance or attendance which is similar to or connected with the unsatisfactory performance or attendance referred to in the written improvement notice.

Arrangement of second stage meeting

20.—(1) Where the line manager requires the officer concerned to attend a second stage meeting, the second line manager shall as soon as reasonably practicable give a notice in writing to the officer concerned—

- (a) referring to the requirement on the officer concerned to attend a second stage meeting of the unsatisfactory performance procedures with the second line manager;
- (b) informing him of the procedures for determining the date and time of the meeting under paragraphs (3) to (6);
- (c) summarising the reasons why his performance or attendance is considered unsatisfactory;

- (d) informing him of the possible outcomes of a second stage meeting and a third stage meeting;
 - (e) informing him that the line manager may attend the meeting;
 - (f) informing him that a human resources professional or a police officer may attend the meeting to advise the second line manager on the proceedings;
 - (g) informing him that, if he consents, any other person specified in the notice may attend the meeting;
 - (h) where the officer concerned is a member of a police force, informing him that he may seek advice from a representative of his staff association;
 - (i) informing him that he may be accompanied and represented at the meeting by a police friend; and
 - (j) informing him that he must provide to the second line manager in advance of the meeting a copy of any document he intends to rely on at the meeting.
- (2) Such notice shall be accompanied by a copy of any document relied upon by the line manager when he formed the view referred to in regulation 19(2) or (4), as the case may be.
- (3) The second line manager shall, if reasonably practicable, agree a date and time for the meeting with the officer concerned.
- (4) Where no date and time is agreed under paragraph (3), the second line manager shall specify a date and time for the meeting.
- (5) Where a date and time is specified under paragraph (4) and—
- (a) the officer concerned or his police friend will not be available at that time; and
 - (b) the officer concerned proposes an alternative time which satisfies paragraph (6),
- the meeting must be postponed to the time proposed by the officer concerned.
- (6) An alternative time must—
- (a) be reasonable; and
 - (b) fall before the end of five working days beginning with the first working day after the day specified by the second line manager under paragraph (4).
- (7) The second line manager shall give to the officer concerned a notice in writing of the date and time of the second stage meeting determined in accordance with paragraphs (3) to (6) and of the place of the meeting.
- (8) In advance of the second stage meeting, the officer concerned shall provide the second line manager with a copy of any document he intends to rely on at the meeting.

Procedure at second stage meeting

- 21.**—(1) The following provisions of this regulation shall apply to the procedure to be followed at the second stage meeting.
- (2) The meeting shall be conducted by the second line manager and may be attended by the line manager.
- (3) A human resources professional or a police officer may attend the meeting to advise the second line manager on the proceedings.
- (4) Any other person specified in the notice referred to in regulation 20(1) may attend the meeting if the officer concerned consents to such attendance.
- (5) The second line manager shall—
- (a) explain to the officer concerned the reasons why he has been required to attend the meeting;

- (b) provide the officer concerned with an opportunity to make representations in response;
- (c) provide his police friend (if he has one) with an opportunity to address the meeting in accordance with regulation 8(3)(a).

(6) If, after considering any representations made under paragraph (5)(b) or (c), the second line manager finds that the performance or attendance of the officer concerned has been unsatisfactory during the period specified in accordance with regulation 14(6)(c) or during any part of the validity period of the written improvement notice remaining after the expiry of such period, he shall—

- (a) inform the officer concerned in what respect his performance or attendance is considered unsatisfactory;
- (b) inform the officer concerned of the improvement that is required in his performance or attendance;
- (c) inform the officer concerned that, if a sufficient improvement is not made within such reasonable period as the second line manager shall specify (being a period not greater than 12 months), he may be required to attend a third stage meeting in accordance with regulation 26 and the second line manager shall specify the date on which this period ends;
- (d) inform the officer concerned that he will receive a final written improvement notice; and
- (e) inform the officer concerned that if the sufficient improvement referred to in sub-paragraph (c) is not maintained during any part of the validity period of such notice remaining after the expiry of the period specified in accordance with sub-paragraph (c), he may be required to attend a third stage meeting in accordance with regulation 26.

(7) The second line manager may, if he considers it appropriate, recommend that the officer concerned seeks assistance in relation to any matter affecting his health or welfare.

(8) The second line manager may postpone or adjourn the meeting to a specified later time or date if it appears to him necessary or expedient to do so.

Procedure following second stage meeting

22.—(1) The second line manager shall, as soon as reasonably practicable after the date of the conclusion of the second stage meeting—

- (a) cause to be prepared a written record of the meeting; and
- (b) where he made a finding at the meeting as set out in regulation 21(6), cause to be prepared a final written improvement notice.

(2) Where the officer concerned has failed to attend a second stage meeting, if the second line manager makes a finding as set out in regulation 21(6), he shall as soon as reasonably practicable—

- (a) cause to be prepared a final written improvement notice; and
- (b) if the police friend of the officer concerned attended the meeting, cause to be prepared a written record of the meeting.

(3) A final written improvement notice shall—

- (a) record the matters of which the officer concerned was informed (or would have been informed had he attended the meeting) under sub-paragraphs (a) to (c) and (e) of regulation 21(6);
- (b) state the period for which it is valid; and
- (c) be signed and dated by the second line manager.

(4) A final written improvement notice shall be valid for a period of twelve months from the date of the notice (the “validity period”).

(5) The second line manager shall give a copy of any written record and any final written improvement notice to the officer concerned as soon as reasonably practicable after they have been prepared.

(6) Where the second line manager made a finding as set out in regulation 21(6) and has caused to be prepared a final written improvement notice, he shall, at the same time as supplying the documents mentioned in paragraph (5), notify the officer concerned in writing of the matters set out in regulation 23, of the name of the person to whom a written notice of appeal must be given under that regulation, of his entitlements under paragraphs (7) and (8) and of the effect of paragraph (9).

(7) Subject to paragraphs (8) and (9), the officer concerned shall be entitled to submit written comments on the written record to the second line manager before the end of 7 working days beginning with the first working day after the day on which the copy is received by the officer concerned.

(8) The second line manager may, on the application of the officer concerned, extend the period specified in paragraph (7) if he is satisfied that it is appropriate to do so.

(9) The officer concerned shall not be entitled to submit written comments on the written record if he has exercised his right to appeal under regulation 23.

(10) The second line manager shall ensure that any written record, any final written improvement notice and any written comments of the officer concerned on the written record are retained together and filed.

Appeal against the finding and outcome of a second stage meeting

23.—(1) This regulation applies where, at the second stage meeting, the second line manager found that the performance or attendance of the officer concerned has been unsatisfactory as set out in regulation 21(6).

(2) Where this regulation applies, the officer concerned may appeal against one or more of the following—

- (a) such finding;
- (b) any of the matters specified in paragraph (3) and recorded in the final written improvement notice (in these Regulations referred to as the relevant terms of the final written improvement notice);
- (c) the decision of the line manager to require the officer concerned to attend the second stage meeting.

(3) The matters specified in this paragraph are—

- (a) the respect in which the performance or attendance of the officer concerned is considered unsatisfactory;
- (b) the improvement that is required in his performance or attendance;
- (c) the length of the period specified by the second line manager in accordance with regulation 21(6)(c).

(4) The only grounds of appeal under this regulation are—

- (a) that, in relation to an appeal under paragraph (2)(c), the officer concerned should not have been required to attend the second stage meeting as the meeting did not, in accordance with regulation 19(6), concern unsatisfactory performance or attendance which is similar to or connected with the unsatisfactory performance or attendance referred to in the written improvement notice;
- (b) that the finding of unsatisfactory performance or attendance was unreasonable;
- (c) that any of the relevant terms of the final written improvement notice are unreasonable;

- (d) that there is evidence that could not reasonably have been considered at the second stage meeting which could have materially affected the finding of unsatisfactory performance or attendance or any of the relevant terms of the final written improvement notice;
- (e) that there was a breach of the procedures set out in these Regulations or other unfairness which could have materially affected the finding of unsatisfactory performance or attendance or any of the relevant terms of the final written improvement notice.

(5) An appeal shall be commenced by the officer concerned giving written notice of appeal to the senior manager before the end of 7 working days beginning with the first working day after receipt of the documents referred to in regulation 22(5).

(6) Such notice must—

- (a) set out the grounds of appeal of the officer concerned; and
- (b) be accompanied by any evidence on which the officer concerned relies.

(7) The senior manager may, on the application of the officer concerned, extend the period specified in paragraph (5) if he is satisfied that it is appropriate to do so.

(8) Subject to paragraph (9), the meeting at which the appeal will be heard (referred to in these Regulations as a second stage appeal meeting) shall take place before the end of 7 working days beginning with the first working day after the day on which the notification under paragraph (5) is received by the senior manager.

(9) A second stage appeal meeting may take place after the period of 7 working days referred to in paragraph (8) if the senior manager considers it necessary or expedient, in which case he shall notify the officer concerned of his reasons in writing.

Arrangement of second stage appeal meeting

24.—(1) As soon as reasonably practicable after receipt by the senior manager of the notice of appeal referred to in regulation 23(5), the senior manager shall give a notice in writing to the officer concerned—

- (a) informing him of the procedures for determining the date and time of the meeting under paragraphs (2) to (5);
- (b) informing him that a human resources professional or a police officer may attend the meeting to advise the senior manager on the proceedings;
- (c) informing him that, if he consents, any other person specified in the notice may attend the meeting;
- (d) where the officer concerned is a member of a police force, informing him that he may seek advice from a representative of his staff association; and
- (e) informing him that he may be accompanied and represented at the meeting by a police friend.

(2) The senior manager shall, if reasonably practicable, agree a date and time for the meeting with the officer concerned.

(3) Where no date and time is agreed under paragraph (2), the senior manager shall specify a date and time for the meeting.

(4) Where a date and time is specified under paragraph (3) and—

- (a) the officer concerned or his police friend will not be available at that time; and
- (b) the officer concerned proposes an alternative time which satisfies paragraph (5),

the meeting must be postponed to the time proposed by the officer concerned.

(5) An alternative time must—

- (a) be reasonable; and
 - (b) fall before the end of five working days beginning with the first working day after the day specified by the senior manager under paragraph (3).
- (6) The senior manager shall give to the officer concerned a notice in writing of the date and time of the second stage appeal meeting determined in accordance with paragraphs (2) to (5) and of the place of the meeting.

Procedure at second stage appeal meeting

25.—(1) The following provisions of this regulation apply to the procedure to be followed at a second stage appeal meeting.

- (2) The meeting shall be conducted by the senior manager.
- (3) A human resources professional or a police officer may attend the meeting to advise the senior manager on the proceedings.
- (4) Any other person specified in the notice referred to in regulation 24(1) may attend the meeting if the officer concerned consents to such attendance.
- (5) The senior manager shall—
 - (a) provide the officer concerned with an opportunity to make representations; and
 - (b) provide his police friend (if he has one) with an opportunity to address the meeting in accordance with regulation 8(3)(a).
- (6) After considering any representations made in accordance with paragraph (5), the senior manager may—
 - (a) in an appeal under regulation 23(2)(c), make a finding that the officer concerned should not have been required to attend the second stage meeting and reverse the finding made at that meeting;
 - (b) confirm or reverse the finding of unsatisfactory performance or attendance made at the second stage meeting;
 - (c) confirm or vary the relevant terms of the final written improvement notice appealed against.
- (7) Where the senior manager has reversed the finding of unsatisfactory performance or attendance made at the second stage meeting, the senior manager shall also revoke the final written improvement notice.
- (8) The senior manager may postpone or adjourn the meeting to a specified later time or date if it appears to him necessary or expedient to do so.
- (9) As soon as reasonably practicable after the conclusion of the meeting, the officer concerned shall be given written notice of the senior manager's decision and a written summary of the reasons for that decision but in any event, the officer concerned shall be given written notice of the decision before the end of three working days beginning with the first working day after the conclusion of the meeting.
- (10) Where the senior manager has—
 - (a) reversed the finding made as set out in regulation 21(6) and revoked the final written improvement notice; or
 - (b) varied any of the relevant terms of the final written improvement notice,
 the decision of the senior manager shall take effect by way of substitution for the finding, the final written improvement notice issued or the relevant terms of the final written improvement notice appealed against from the date of the second stage meeting.

PART 5

Third stage

Assessment following second stage meeting

26.—(1) Where a police officer has received a final written improvement notice, as soon as reasonably practicable after the date on which the period specified in accordance with regulation 21(6)(c) ends—

- (a) the line manager shall assess the performance or attendance of the officer concerned during that period, in consultation with the second line manager or a human resources professional (or both); and
- (b) the line manager shall notify the officer concerned in writing whether the line manager considers that there has been a sufficient improvement in performance or attendance during that period.

(2) If the line manager considers that there has not been a sufficient improvement, he shall, at the same time as he gives notification under paragraph (1)(b), also notify the officer concerned in writing that he is required to attend a meeting (in these Regulations referred to as a third stage meeting) to consider his performance or attendance.

(3) Where—

- (a) the officer concerned has not been required to attend a third stage meeting under paragraph (2), or
- (b) the officer concerned has been required to attend a third stage meeting under paragraph (2) but the panel did not make a finding of unsatisfactory performance or attendance at that meeting,

the officer concerned may be required to attend a third stage meeting under paragraph (4).

(4) If the line manager considers that the officer concerned has failed to maintain a sufficient improvement in his performance or attendance during any part of the validity period of the final written improvement notice remaining after the expiry of the period specified in accordance with regulation 21(6)(c), he shall notify the officer concerned in writing of the matters set out in paragraph (5).

(5) Those matters are—

- (a) that he is of the view mentioned in paragraph (4); and
- (b) that the officer concerned is required to attend a meeting (in these Regulations referred to as a third stage meeting) to consider his performance or attendance.

(6) Subject to regulation 28, any third stage meeting which a police officer is required to attend must concern unsatisfactory performance or attendance which is similar to or connected with the unsatisfactory performance or attendance referred to in the final written improvement notice.

Arrangement of a third stage meeting

27.—(1) Where the line manager requires the officer concerned to attend a third stage meeting, the senior manager shall as soon as reasonably practicable give a notice in writing to the officer concerned—

- (a) referring to the requirement on the officer concerned to attend a third stage meeting of the unsatisfactory performance procedures with a panel appointed by the appropriate authority;

- (b) informing him of the procedures for determining the date and time of the meeting under regulation 34;
- (c) summarising the reasons why his performance or attendance is considered unsatisfactory;
- (d) informing him of the possible outcomes of the meeting;
- (e) informing him that a human resources professional and a police officer may attend the meeting to advise the panel on the proceedings;
- (f) informing him that a relevant lawyer may attend the meeting to advise the panel on the proceedings and on any question of law that may arise at the meeting;
- (g) where the officer concerned is a special constable, informing him that a special constable shall attend the meeting to advise the panel;
- (h) informing him that, if he consents, any other person specified in the notice may attend the meeting;
- (i) where the officer concerned is a member of a police force, informing him that he may seek advice from a representative of his staff association; and
- (j) informing him that he may be accompanied and represented at the meeting by a police friend.

(2) Such notice shall be accompanied by a copy of any document relied upon by the line manager when he formed the view referred to in regulation 26(2) or (4), as the case may be.

(3) A third stage meeting under this regulation shall not take place unless the officer concerned has been notified of his right to representation under paragraph (1)(j).

Circumstances in which a third stage meeting may be required without a prior first or second stage meeting

28.—(1) This regulation applies where the appropriate authority considers that the performance of a police officer constitutes gross incompetence.

(2) Where this regulation applies, the appropriate authority may inform the officer concerned in writing that he is required to attend a meeting to consider his performance.

(3) Such meeting shall be referred to in these Regulations as a third stage meeting, notwithstanding that the officer concerned has not attended a first stage meeting or a second stage meeting in respect of such performance.

Arrangement of a third stage meeting without a prior first or second stage meeting

29.—(1) Where the appropriate authority has informed the officer concerned under regulation 28(2) that he is required to attend a third stage meeting, the appropriate authority shall as soon as reasonably practicable give to the officer concerned a notice in writing—

- (a) referring to the requirement on the officer concerned to attend a third stage meeting of the unsatisfactory performance procedures with a panel appointed by the appropriate authority;
- (b) informing him of the procedures for determining the date and time of the meeting under regulation 34;
- (c) summarising the reasons why his performance is considered to constitute gross incompetence;
- (d) informing him of the possible outcomes of the meeting;
- (e) informing him that a human resources professional and a police officer may attend the meeting to advise the panel on the proceedings;

- (f) informing him that a relevant lawyer may attend the meeting to advise the panel on the proceedings and on any question of law that may arise at the meeting;
- (g) where the officer concerned is a special constable, informing him that a special constable shall attend the meeting to act as an advisor to the panel;
- (h) informing him that, if he consents, any other person specified in the notice may attend the meeting;
- (i) where the officer concerned is a member of a police force, informing him that he may seek advice from a representative of his staff association;
- (j) informing him of the effect of regulation 6; and
- (k) informing him that he may be accompanied at the meeting by a police friend.

(2) Such notice shall be accompanied by a copy of any document relied upon by the appropriate authority when it formed the view referred to in regulation 28(1).

Appointment of panel members

30.—(1) The third stage meeting shall be conducted by a panel, which shall comprise a panel chair and two other members.

(2) The panel shall be appointed by the appropriate authority.

(3) The panel chair shall be a senior officer or a senior human resources professional.

(4) One panel member shall be either a police officer or a human resources professional of at least the rank of superintendent or (in the opinion of the appropriate authority) equivalent.

(5) The other panel member shall be either a police officer or a police staff member of at least the rank of superintendent or (in the opinion of the appropriate authority) equivalent.

(6) At least one panel member shall be a police officer.

(7) At least one panel member shall be a human resources professional.

(8) Each panel member shall be of at least the same rank as or (in the opinion of the appropriate authority) equivalent of the officer concerned.

(9) No panel member shall be an interested party.

(10) As soon as reasonably practicable after the panel members have been appointed, the appropriate authority shall notify in writing the officer concerned of their names.

(11) As soon as the appropriate authority has appointed the panel members, the appropriate authority shall arrange for a copy of any document—

- (a) which was available to the line manager in relation to any first stage meeting;
- (b) which was available to the second line manager in relation to any second stage meeting; or
- (c) which was prepared or submitted under regulation 15, 18, 22, 25, 26, 27, 28 or 29 as the case may be,

to be made available to each panel member; and a copy of any such document shall be given to the officer concerned.

(12) For the purposes of this regulation, a “senior human resources professional” means a human resources professional who, in the opinion of the appropriate authority, has sufficient seniority, skills and experience to be a panel chair.

Right of officer concerned to object to panel members

31.—(1) The officer concerned may object to the appointment of any of the panel members.

(2) Any such objection must be made in writing to the appropriate authority before the end of 3 working days beginning with the first working day after receipt of the notification referred to in regulation 30(10) and must set out the grounds of objection of the officer concerned.

(3) The appropriate authority shall notify the officer concerned in writing whether it upholds or rejects an objection to any panel member.

(4) If the appropriate authority upholds an objection, the appropriate authority shall remove that member from the panel and shall appoint a new member to the panel.

(5) If the appropriate authority appoints a new panel member under paragraph (4), it must ensure that the requirements for the composition of the panel in regulation 30 continue to be met.

(6) As soon as reasonably practicable after any such appointment, the appropriate authority shall notify in writing the officer concerned of the name of the new panel member.

(7) The officer concerned may object to the appointment of a panel member appointed under paragraph (4).

(8) Any such objection must be made in accordance with paragraph (2), provided that it must be made before the end of 3 working days beginning with the first working day after receipt of the notification referred to in paragraph (6); and the appropriate authority shall comply with paragraphs (3) to (6) in relation to the objection, but paragraph (7) shall not apply.

Procedure on receipt of notice of third stage meeting

32.—(1) Before the end of—

- (a) 14 working days beginning with the first working day after the date on which a notice has been given to the officer concerned under regulation 27 or 29; or
- (b) where that period is extended by the panel chair for exceptional circumstances, such extended period,

the officer concerned shall comply with paragraphs (2) and (3).

(2) The officer concerned shall provide to the appropriate authority—

- (a) written notice of whether or not he accepts that his performance or attendance has been unsatisfactory or that he has been grossly incompetent, as the case may be;
- (b) where he accepts that his performance or attendance has been unsatisfactory or that he has been grossly incompetent, any written submission he wishes to make in mitigation;
- (c) where he does not accept that his performance or attendance has been unsatisfactory or that he has been grossly incompetent, or where he disputes all or part of the matters referred to in the notice given under regulation 27 or 29, written notice of—
 - (i) the matters he disputes and his account of the relevant events; and
 - (ii) any arguments on points of law he wishes to be considered by the panel.

(3) The officer concerned shall provide the appropriate authority and the panel with a copy of any document he intends to rely on at the third stage meeting.

(4) Before the end of 3 working days beginning with the first working day after the date on which the officer concerned has complied with paragraph (2), the senior manager and the officer concerned shall each supply to the other a list of proposed witnesses or give notice that they do not have any proposed witnesses; and any list of proposed witnesses shall include brief details of the evidence that each witness is able to adduce and their address.

(5) Where there are proposed witnesses, the officer concerned shall, if reasonably practicable, agree a list of proposed witnesses with the senior manager.

(6) Where no list of proposed witnesses is agreed under paragraph (4), the officer concerned shall supply to the appropriate authority his list of proposed witnesses.

Witnesses

33.—(1) As soon as reasonably practicable after any list of proposed witnesses has been—

- (a) agreed under regulation 32(5); or
- (b) supplied under regulation 32(6),

the appropriate authority shall supply that list to the panel chair together, in the latter case, with a list of its proposed witnesses.

(2) The panel chair shall—

- (a) consider the list or lists of proposed witnesses; and
- (b) subject to paragraph (3), determine which, if any, witnesses should attend the third stage meeting.

(3) The panel chair may determine that witnesses not named in any list of proposed witnesses should attend the third stage meeting.

(4) No witness shall give evidence at a third stage meeting unless the panel chair reasonably believes that it is necessary in the interests of fairness for the witness to do so, in which case he shall—

- (a) where the witness is a police officer, cause that person to be ordered to attend the third stage meeting; and
- (b) in any other case, cause the witness to be given notice that his attendance is necessary and of the date, time and place of the meeting.

Timing and notice of third stage meeting

34.—(1) Subject to paragraphs (2) and (6) and regulation 35, the third stage meeting shall take place before the end of 30 working days beginning with the first working day after the day on which a notice has been given to the officer concerned under regulation 27 or 29.

(2) The panel chair may extend the time period specified in paragraph (1) where he considers that it would be in the interests of fairness to do so.

(3) Where the panel chair extends the time period under paragraph (2), he shall provide written notification of his reasons for so doing to the appropriate authority and the officer concerned.

(4) The panel chair shall, if reasonably practicable, agree a date and time for the third stage meeting with the officer concerned.

(5) Where no date and time is agreed under paragraph (4), the panel chair shall specify a date and time for the third stage meeting.

(6) Where a date and time is specified under paragraph (5) and—

- (a) the officer concerned or his police friend will not be available at that time; and
- (b) the officer concerned proposes an alternative time which satisfies subsection (7),

the third stage meeting shall be postponed to the time proposed by the officer concerned.

(7) An alternative time must—

- (a) be reasonable; and
- (b) fall before the end of 5 working days beginning with the first working day after the day specified by the panel chair.

(8) The panel chair shall give to the officer concerned a notice in writing of the date and time of the third stage meeting determined in accordance with this regulation and of the place of the meeting.

(9) Where the officer concerned informs the panel chair in advance that he is unable to attend the third stage meeting on grounds which the panel chair considers reasonable, the panel chair may allow the officer concerned to participate in the meeting by video link or other means.

Postponement and adjournment of a third stage meeting

35.—(1) If the panel chair considers it necessary or expedient, he may direct that the third stage meeting take place at a different time to that specified in the notice given under regulation 34.

(2) Such direction may specify a time which falls after the period of 30 working days referred to in regulation 34(1).

(3) Where the panel chair makes a direction under paragraph (1) he shall notify in writing the officer concerned, the other panel members and the appropriate authority of his reasons and the revised time and place for the meeting.

Procedure at a third stage meeting

36.—(1) Subject to the provisions of this regulation, the procedure at the third stage meeting shall be such as the panel chair may determine.

(2) The third stage meeting shall be held in private.

(3) A human resources professional and a police officer may attend the meeting to advise the panel on the proceedings.

(4) A relevant lawyer may attend the meeting to advise the panel on the proceedings and on any question of law that may arise at the meeting.

(5) Where the officer concerned is a special constable, the appropriate authority shall appoint a special constable with sufficient seniority and experience to act as an adviser to the panel, who shall attend the meeting.

(6) Any other person specified in the notice referred to in regulation 27(1) or 29(1) may attend the meeting if the officer concerned consents to such attendance.

(7) Where the officer concerned is required to attend a third stage meeting under regulation 26, the panel chair shall—

(a) provide the officer concerned with an opportunity to make representations in relation to the matters referred to in the notice given under regulation 27;

(b) provide his police friend (if he has one) with an opportunity to address the meeting in relation to such matters in accordance with regulation 8(3)(a).

(8) Where the officer concerned is required to attend a third stage meeting under regulation 28, the panel chair shall—

(a) provide the officer concerned with an opportunity to make representations in relation to the matters referred to in the notice given under regulation 29;

(b) provide the person representing the officer with an opportunity to address the meeting in relation to such matters in accordance with regulation 8(3)(a).

(9) The panel chair may adjourn the meeting to a specified later time or date if it appears to him necessary or expedient to do so.

(10) A verbatim record of the meeting shall be taken; and the officer concerned shall, on request, be supplied with a copy of such record.

Finding

37.—(1) Following the third stage meeting, the panel shall make a finding whether—

- (a) in a case falling within regulation 26(2), the performance or attendance of the officer concerned during the period specified in accordance with regulation 21(6)(c) has been satisfactory or not;
 - (b) in a case falling within regulation 26(4), the performance or attendance of the officer concerned during any part of the validity period of the final written improvement notice remaining after the expiry of the period specified in accordance with regulation 21(6)(c) has been satisfactory or not; or
 - (c) in a case falling within regulation 28, the performance of the officer concerned constitutes gross incompetence, unsatisfactory performance or neither.
- (2) The panel shall prepare (or shall cause to be prepared) their decision in writing which shall state the finding and, where they have found—
- (a) in a case falling within regulation 26(2) or (4), that the performance or attendance of the officer concerned has been unsatisfactory; or
 - (b) in a case falling within regulation 28, that his performance constitutes gross incompetence or unsatisfactory performance,

their reasons as well as any outcome which they order under regulation 38.

- (3) As soon as reasonably practicable after the conclusion of the meeting, the panel chair shall give a written copy of the decision to—
- (a) the officer concerned; and
 - (b) the line manager,

but in any event, the officer concerned shall be given written notice of the finding before the end of three working days beginning with the first working day after the conclusion of the meeting.

(4) Where the panel have made a finding of unsatisfactory performance or attendance or gross incompetence, the copy of the decision given to the officer concerned shall be accompanied by a notice in writing setting out the circumstances in which and the timeframe within which a police officer may appeal to a police appeals tribunal under the Police Appeals Tribunals Rules 2008(10).

(5) Any finding or decision of the panel under this regulation or regulation 38 shall be based on a simple majority but shall not indicate whether it was taken unanimously or by a majority.

Outcomes

38.—(1) If the panel make a finding that, in a case falling within regulation 26(2) or (4), the performance or attendance of the officer concerned has been unsatisfactory they may, subject to paragraph (4), order—

- (a) one of the outcomes mentioned in paragraph (3)(a), (c) or (f); or
- (b) where the panel are satisfied that there are exceptional circumstances which justify it, the outcome mentioned in paragraph (3)(d).

(2) If the panel make a finding that, in a case falling within regulation 28, the performance of the officer concerned constitutes gross incompetence, they may order one of the outcomes mentioned in paragraph (3)(b), (c), (e) or (f).

(3) The outcomes mentioned in this paragraph are:

- (a) dismissal of the officer concerned with notice, the period of such notice to be decided by the panel, subject to a minimum period of 28 days;
- (b) dismissal of the officer concerned with immediate effect;
- (c) reduction in rank of the officer concerned with immediate effect;

- (d) an extension of the final written improvement notice;
 - (e) the issue of a final written improvement notice;
 - (f) redeployment to alternative duties (which may involve a reduction of rank) within the police force concerned.
- (4) The panel may not order the outcome mentioned in paragraph (3)(c) where—
- (a) the officer concerned is a special constable; or
 - (b) the third stage meeting relates to the attendance of the officer concerned.
- (5) If the panel make a finding, in a case falling within regulation 28, of unsatisfactory performance, they shall order the issue of a written improvement notice.
- (6) A written improvement notice or a final written improvement notice issued under this regulation shall—
- (a) state in what respect the performance or attendance of the officer concerned (as the case may be) is considered unsatisfactory or grossly incompetent;
 - (b) state the improvement that is required in his performance or attendance;
 - (c) state that, if a sufficient improvement is not made within such reasonable period as the panel shall specify (being a period not greater than 12 months), the officer concerned may be required to attend a second stage meeting (in the case of a written improvement notice) or another third stage meeting (in the case of a final written improvement notice) and state the date on which this period ends;
 - (d) state that it shall be valid for a period of twelve months from the date of the notice (the “validity period”);
 - (e) state that, if the sufficient improvement referred to in sub-paragraph (c) is not maintained during any part of the validity period remaining after the expiry of the period specified in accordance with sub-paragraph (c), he may be required to attend a second stage meeting (in the case of a written improvement notice) or another third stage meeting (in the case of a final written improvement notice); and
 - (f) be signed and dated by the panel chair.
- (7) Where the panel orders an extension of the final written improvement notice—
- (a) the notice shall be amended—
 - (i) to state that if the officer concerned does not make a sufficient improvement within such reasonable period as the panel shall specify (being a period not greater than 12 months) he may be required to attend another third stage meeting; and
 - (ii) to state the date on which this period ends;
 - (b) the panel may vary any of the other matters recorded in the notice;
 - (c) the notice shall be valid for a further period of twelve months from the date of the extension (the “validity period”) and shall state the date on which it expires.

Assessment of performance or attendance following third stage meeting

39.—(1) This regulation applies where a written improvement notice has been issued under regulation 38.

(2) Where this regulation applies, the performance of the officer concerned shall be assessed under regulation 19 as if he had received a written improvement notice under regulation 15.

(3) Where, as a result of such assessment, the officer concerned is required to attend a second stage meeting, these Regulations shall have effect as if he had been required to attend that meeting under regulation 19; and—

- (a) references to the period specified in accordance with regulation 14(6)(c) shall be construed as references to the period specified under regulation 38(6)(c); and
- (b) references to the validity period of the written improvement notice shall be construed as references to the validity period of the written improvement notice issued under regulation 38.

(4) Where a police officer is required to attend such a second stage meeting, that meeting must concern unsatisfactory performance which is similar to or connected with the unsatisfactory performance referred to in the written improvement notice.

40.—(1) This regulation applies where a final written improvement notice has been issued or extended under regulation 38.

(2) Where this regulation applies, as soon as reasonably practicable after the reasonable period specified by the panel under regulation 38(6)(c) or (7)(a) ends—

- (a) the panel shall assess the performance or attendance of the officer concerned (as the case may be) during that period; and
- (b) the panel chair shall notify the officer concerned in writing whether the panel considers that there has been a sufficient improvement in performance or attendance during that period.

(3) If the panel considers that there has not been a sufficient improvement, the panel chair shall, at the same time as he gives notification under paragraph (2)(b), also notify the officer concerned in writing that he is required to attend another third stage meeting to consider his performance or attendance.

(4) Where—

- (a) the officer concerned has not been required to attend a third stage meeting under paragraph (3), or
- (b) the officer concerned has been required to attend a third stage meeting under paragraph (3) but the panel did not make a finding of unsatisfactory performance or attendance at that meeting,

the officer concerned may be required to attend a third stage meeting under paragraph (5).

(5) If the panel considers that the officer concerned has failed to maintain a sufficient improvement in his performance or attendance during any part of the validity period of the final written improvement notice remaining after the expiry of the period specified in accordance with regulation 38(6)(c) or (7)(a), the panel chair shall notify the officer concerned in writing of the matters set out in paragraph (6).

(6) Those matters are—

- (a) that the panel is of the view mentioned in paragraph (5); and
- (b) that the officer concerned is required to attend another third stage meeting to consider his performance or attendance.

(7) In a case falling within paragraph (3) or (5), the appropriate authority shall give the officer concerned the notice referred to in regulation 27.

(8) Where the officer concerned is required to attend a third stage meeting under this regulation, these Regulations shall have effect as if the case fell within regulation 26(2) or (4) as the case may be and—

- (a) references to the period specified in accordance with regulation 21(6)(c) shall be construed as references to the period specified under regulation 38(6)(c) or (7)(a), as the case may be; and

(b) references to the validity period of the final written improvement notice shall be construed as references to the validity period mentioned in regulation 38(6)(c) or (7)(c), as the case may be.

(9) Any third stage meeting which a police officer is required to attend under this regulation must concern unsatisfactory performance or attendance which is similar to or connected with the unsatisfactory performance or attendance referred to in the final written improvement notice issued or extended under regulation 38.

(10) References in this regulation to the panel are references to the panel that conducted the initial third stage meeting, subject to paragraph (11).

(11) Where any of the panel members are not able to continue to act as such, the appropriate authority shall remove that member from the panel and shall appoint a new member to the panel.

(12) If the appropriate authority appoints a new panel member under paragraph (11), it must ensure that the requirements for the composition of the panel in regulation 30 continue to be met.

(13) As soon as reasonably practicable after any such appointment, the appropriate authority shall notify in writing the officer concerned of the name of the new panel member.

(14) The officer concerned may object to the appointment of a panel member appointed under paragraph (11).

(15) Any such objection must be made in accordance with regulation 31(2), provided that it must be made before the end of 3 working days beginning with the first working day after receipt of the notification referred to in paragraph (13); and the appropriate authority shall comply with regulation 31(3) to (6) in relation to the objection but paragraph (7) of that regulation shall not apply.

41.—(1) Where an officer is required to attend another third stage meeting under regulation 40—

(a) that meeting shall be conducted by the same panel as conducted the initial third stage meeting (subject to any change in that panel under regulation 40);

(b) the officer concerned shall not have the right to object to panel members under regulation 31, except in accordance with regulation 40;

(c) subject to paragraph (2), regulations 32 to 38 shall apply to, or in relation to, that meeting.

(2) Following that third stage meeting, the panel may not order the outcome mentioned in regulation 38(3)(d).

Home Office

Minister of State

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations establish procedures for proceedings in respect of unsatisfactory performance or attendance of members of police forces of the rank of chief superintendent or below (excluding probationers) and special constables.

Part 1 deals with preliminary matters. Regulation 3 revokes the Police (Efficiency) Regulations 1999 and the two further sets of regulations which amended those regulations. However, such regulations shall continue to have effect in respect of unsatisfactory performance or attendance which came to the attention of a line manager before the coming into force of these Regulations. Regulation 4 provides definitions of terms used in these Regulations and makes provision in relation to the delegation of functions of the chief officer of police under these Regulations.

Part 2 deals with general matters. Regulations 5 and 6 make provision about the role of a police friend under these Regulations and the right to legal representation. Regulation 7 provides for the manner in which a written notice or document is to be given to or supplied to a police officer. Regulation 8 contains general provision about the procedure for meetings held in accordance with the Regulations. Regulation 9 makes provision for a senior manager to appoint someone to carry out functions of a line manager or a second line manager under the Regulations. Regulations 10 and 11 make provision about extensions and suspensions of certain periods specified in the Regulations.

Part 3 deals with the first stage of the procedures under the Regulations. It makes provision about the circumstances in which a first stage meeting may be required, the arrangement of such a meeting and the procedures to be followed at and subsequent to the meeting. If the outcome of the meeting is a finding of unsatisfactory performance or attendance, the police officer will be issued with a written improvement notice under regulation 15. Regulations 16 to 18 make provision for the officer to appeal against such a finding and/or particular terms of the notice.

Part 4 makes similar provision in respect of the second stage of the procedures. A police officer can be required to attend a second stage meeting following a first stage meeting if, during specified periods, he has failed to improve his performance or attendance, or if he has failed to maintain such an improvement. If the outcome of the second stage meeting is a finding of unsatisfactory performance or attendance, the police officer will be issued with a final written improvement notice under regulation 22. Regulations 23 to 25 make provision for the officer to appeal against such a finding and/or particular terms of the notice.

Part 5 makes provision in respect of the third stage of the procedures. A police officer can be required to attend a third stage meeting following a second stage meeting if, during specified periods, he has failed to improve his performance or attendance, or if he has failed to maintain such an improvement. A police officer can also be required to attend a third stage meeting, even where he has not attended a first or second stage meeting, if the appropriate authority considers that the performance of the officer constitutes gross incompetence. A third stage meeting is conducted by a panel of three persons appointed by the chief officer of police in accordance with regulation 30. Regulation 31 gives the police officer the right to object to any of the panel members. Regulations 32 to 36 deal with procedural matters relating to the third stage meeting, witnesses and the timing of the meeting. Regulation 37 makes provision for the decision of the panel following the third stage meeting, which must set out the panel's finding, its reasons and any outcome ordered under regulation 38. Regulations 39 to 41 make provision for the performance or attendance of the officer to be assessed following the third stage meeting where the panel have ordered the issue of a written improvement notice, or the issue or extension of a final written improvement notice. In such a case, the officer

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: The Police (Performance) Regulations 2008 No. 2862

concerned may be required to attend a further meeting under these Regulations in connection with his performance or attendance.

These Regulations were laid before Parliament in draft as they are Regulations under section 84 of the Police Act 1996 coming into force at a time that is the earliest time at which any Regulations under section 84 are to come into force after the commencement of paragraph 7 of Schedule 22 to the Criminal Justice and Immigration Act 2008 (see section 84(8) of the Police Act 1996).