

1969 No. 1632 (S.143)
POLICE
The Police (Appeals) (Scotland) Rules 1969

Made - - - - 13th November 1969

Laid before Parliament 27th November 1969

Coming into Operation 1st December 1969

In exercise of the powers conferred on me by paragraph 5 of Schedule 3 to the Police (Scotland) Act 1967(a) and after consultation with the Council on Tribunals in terms of section 7A of the Tribunals and Inquiries Act 1958(b) I hereby make the following rules :—

1.—(1) These rules may be cited as the Police (Appeals) (Scotland) Rules 1969 and shall come into operation on 1st December 1969.

(2) In these rules, which shall apply to all appeals by constables of a police force in Scotland under section 30 of the Police (Scotland) Act 1967, the expressions “appellant” and “respondent” shall have the same meanings respectively as in the last mentioned Act.

(3) The Interpretation Act 1889(c) shall apply for the interpretation of these rules as it applies for the interpretation of an Act of Parliament.

Notice of Appeal

2.—(1) Notice of Appeal to the Secretary of State shall be given in the form set out in the Schedule to these rules or in a form to the like effect.

(2) The Notice of Appeal shall be sent to the Secretary of State within 21 days from the date on which the appellant received notification of the decision against which he desires to appeal.

Provided that where the Secretary of State is satisfied, on the application of the appellant, that by reason of the special circumstances of the case it is just and right that an appeal should be entertained after the expiration of the period aforesaid, the Notice of Appeal shall be sent to the Secretary of State by such date as he may fix.

(3) The Notice of Appeal sent to the Secretary of State shall be accompanied by

- (a) a statement setting out fully on what grounds the appeal is made ; and
- (b) any documentary evidence which the appellant may desire to submit.

(a) 1967 c. 77.

(b) 1958 c. 66.

(c) 1889 c. 63.

(4) The appellant shall send to the respondent at the time of lodging the appeal a copy of the Notice of Appeal, of the relative statement and of any documentary evidence submitted.

Statement by respondent

3.—(1) The respondent shall, within 21 days of the date of receipt of the copy of the Notice of Appeal and relative statement and documentary evidence referred to in rule 2(4) of these rules, send to the Secretary of State a statement, signed and dated, saying whether or not the appeal is opposed.

Provided that where the Secretary of State is satisfied, on the application of the respondent, that there is good reason why the statement cannot be submitted within 21 days, it shall be sent to the Secretary of State by such date as he may fix.

(2) If the appeal is opposed the statement by the respondent shall

(a) set out fully on what grounds it is opposed ;

(b) contain any representations which the respondent may desire to submit with regard to the information furnished by the appellant ; and

(c) contain a list of any documents which may accompany it in terms of paragraph (4) of this rule.

(3) A copy of the statement by the respondent and of any documents which may accompany it of which the appellant does not already possess a copy shall be sent to the appellant, and the statement shall contain a declaration that a full and true copy of the statement and of such accompanying documents has been sent to the appellant.

(4) The statement sent by the respondent to the Secretary of State shall be accompanied by

(a) any documentary evidence which the respondent may desire to submit ;

(b) a transcript of the verbatim record of the proceedings at the disciplinary hearing which led to the punishment or finding and punishment against which the appeal is made ;

(c) a certified copy of the personal record of the appellant as provided for in the Police (Scotland) Regulations 1968(a), and

(d) a certified copy of the discipline form as provided for in the Police (Discipline) (Scotland) Regulations 1967(b).

Documents to be sent to the Sheriff

4. Unless the Secretary of State decides that an inquiry shall not be held, he shall send to the sheriff the Notice of Appeal, the statements by the appellant and respondent and the other documents referred to in rules 2 and 3 of these rules, and the appellant and respondent shall be informed when this has been done.

Procedure

5. The sheriff, if he considers it necessary or expedient, may appoint the parties to revise and finally adjust their respective statements before proceeding to hold the inquiry.

(a) S.I. 1968/716 (1968 II, p. 2024).

(b) S.I. 1967/1021 (1967 II, p. 3091).

6.—(1) The sheriff shall, by Interlocutor, appoint a day, time and place for the holding of the inquiry and shall ordain the parties to intimate in writing to the Sheriff Clerk specified in the Interlocutor, not later than 5 days before the date of the inquiry the names of any witnesses or havers whom they wish to be required to attend or to produce documents in their possession. The sheriff shall cause a copy of the Interlocutor to be sent to the appellant, the respondent and the Secretary of State not less than 14 days before the date of the inquiry.

(2) The sheriff may proceed with the inquiry in the absence of either the appellant or the respondent, whether represented or not, if it appears to him to be just and proper to do so, and may adjourn the inquiry from time to time as may appear necessary for the due hearing of the appeal.

(3) Subject to these rules, the procedure at an inquiry shall be determined by the sheriff who shall have power to hear any new evidence, and to rehear the evidence given at the disciplinary hearing, and to specify by Interlocutor the procedure to be followed at the inquiry and the party who shall lead evidence first.

Withdrawal of Appeal

7. The appellant may withdraw his appeal at any time prior to its decision by giving notice in writing to the Secretary of State.

Representation at inquiry

8. The appellant shall have the right to be assisted in presenting his appeal and to be represented at the inquiry by a constable or by counsel or a solicitor.

9. The respondent shall have the right to be assisted in opposing the appeal and to be represented at the inquiry by a constable or by the clerk or other officer of the police authority, or by counsel or a solicitor.

Inquiry to be in private

10. Unless the sheriff otherwise directs, the inquiry shall be held in private but without prejudice to this generality the sheriff may allow such person or persons as he considers appropriate to attend the whole or such part of the inquiry as he thinks fit.

Record of evidence at inquiry

11. Unless the Secretary of State otherwise directs, a verbatim record of the evidence given at the inquiry shall be taken.

Report of the Sheriff

12. The sheriff shall include in his report, with reasons for his opinions and recommendations

- (a) a statement of the facts admitted or found to be proved ;
- (b) a statement of his opinion as to whether the punishment awarded was a just and proper one warranted by the facts and, if not, what other punishment (if any) ought to have been awarded ;
- (c) when the appeal is against punishment by dismissal, by being required to resign, or by reduction in rank, a recommendation as to the extent (if any) that the appellant, if he were reinstated in the force or in his

rank, should be deemed for the purposes of pay to have served in the force or in that rank, as the case may be, continuously from the date of the decision appealed from to the date of his reinstatement and, if he was suspended for a period immediately preceding the date of the decision, as to the provision dealing with the suspension which should be included in the determination ; and

- (d) a recommendation as to whether the appellant should be required to pay any, and if so what part, or the whole, of his own expenses of the appeal.

13. The report of the inquiry, and four copies thereof, shall be submitted to the Secretary of State as early as may be after the termination of the inquiry, together with the verbatim record of evidence, the transcription thereof, the Notice of Appeal, the statements by the appellant and respondent, and the other documents referred to in Rules 2 and 3 of these rules.

Further investigation by the Sheriff

14. Where the Secretary of State remits a case for further investigation by the sheriff in accordance with paragraph 3(5) of Schedule 3 to the Police (Scotland) Act 1967, these rules shall apply, subject to any necessary modification, in relation to that further investigation as they apply in relation to an inquiry.

Services of documents

15. Where any notice, statement or other document is required by these rules to be sent by or to the Secretary of State or other person or authority, it shall be a sufficient compliance with these rules if such notice, statement or other document is posted, within such time (if any) as is prescribed by these rules, in a letter for recorded delivery service directed, in the case of a letter to the Secretary of State, to the Secretary, Scottish Home and Health Department, St. Andrew's House, Edinburgh, EH1 3DE and in any other case to the person for whom it is intended at his usual office or other ordinary address.

Determination of questions

16. If any question arises as to the proper compliance with any provision of these rules it shall be determined by the Secretary of State whose decision shall be final.

Revocation

17. The Police (Appeals) (Scotland) Rules 1964(a) are hereby revoked in respect of any punishment imposed after 30th November 1969.

William Ross,
One of Her Majesty's Principal
Secretaries of State.

St. Andrew's House,
Edinburgh.
13th November 1969.

SCHEDULE

FORM OF NOTICE OF APPEAL TO THE SECRETARY OF STATE

I,on..... Give name and number.
19....., while holding the rank of.....
 in the.....police force was punished
 by being..... Insert the punishment awarded.
 on the ground that.....

 Here state the charge or charges under the Discipline Code.

I received notification of the decision on.....
 and acknowledged having received the decision on.....

I appeal against the said finding and punishment on the grounds fully set
 out in the accompanying statement.

This Notice of Appeal is accompanied by the following documentary evidence which I desire to submit:— Omit if unnecessary.
 (1) Give brief particulars, e.g. "letter of 10th August from Chief Constable".
 (2)
 (3)

At the date on which I was so punished I was in receipt of pay at the rate of Omit if there was a period of suspension immediately prior to the punishment.
 £ : : a year

Before being so punished I was suspended on..... Omit if there was no period of suspension immediately prior to the punishment.
19....., at which date I was in receipt of pay at the
 rate of £ : : a year. After being suspended I was
was not
 notified that my period of suspension would be deducted in reckoning my approved service for the purposes of pension.

I declare that a full and true copy of this Notice of Appeal, of the accompanying statement setting out fully on what grounds the appeal is made and of the documentary evidence was sent to..... Give address to which sent. Give dates on which sent.
 as or on behalf of the respondent, on.....

Signature.....

Address.....

Date.....19.

EXPLANATORY NOTE

(This Note is not part of the Rules.)

These rules relate to the procedure to be followed on police disciplinary appeals, and at inquiries in connection with appeals, under the Police (Scotland) Act 1967. They replace the Police (Appeals) (Scotland) Rules 1964 with certain amendments, of which the most important are as follows.

Rule 2(2) extends the time in which an appeal may be lodged to 21 days and Rule 3(1) makes a similar extension of time for submission of the respondent's statement and provides for late submission of the statement subject to the Secretary of State's approval.

Rule 6 sets out in more detail the arrangements for determining the procedure at an inquiry.

Rule 7 makes it clear that an appeal may be withdrawn at any time prior to its decision.

Rule 10 makes it clear that the Sheriff has discretion to permit such persons as he thinks fit to attend the whole or part of an inquiry.