

**1985 No. 576****POLICE****The Police (Appeals) Rules 1985**

<i>Made</i> - - - - -	<i>2nd April 1985</i>
<i>Laid before Parliament</i>	<i>18th April 1985</i>
<i>Coming into Operation</i>	<i>29th April 1985</i>

In exercise of the powers conferred on me by paragraph 5 of Schedule 5 to the Police Act 1964(a), I hereby make the following Rules:—

*Citation and commencement*

1. These rules may be cited as the Police (Appeals) Rules 1985 and shall come into operation on 29th April 1985.

*Revocations and transitional provisions*

2.—(1) Subject to paragraph (2), the Police (Appeals) Rules 1977(b) (hereinafter called “the 1977 Rules”) are hereby revoked.

(2) In relation to an appeal written notice of which was received by the Secretary of State under Rule 4(1) of the 1977 Rules before 29th April 1985—

- (a) nothing in these Rules shall apply, and
- (b) the 1977 Rules shall continue to have effect.

*Interpretation*

3.—(1) In these Rules, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them, that is to say:—

“the Act” means the Police Act 1964;

“the Act of 1984” means the Police and Criminal Evidence Act 1984;

“appeal tribunal” means the person or persons appointed under paragraph 3(1) or (5) of Schedule 5 to the Act;

“appellant” and “respondent” have the same meanings as in the said Schedule 5;

“chairman” in relation to an inquiry means—

- (a) the barrister or solicitor referred to in paragraph 3(3)(a) of the said Schedule 5,
- (b) the person appointed under paragraph 3(5) of the said Schedule 5 whom the Secretary of State has designated as chairman, or

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(a) 1964 c. 48; Schedule 5 was substituted by section 103(2) of the Police and Criminal Evidence Act 1984 (c. 60).

(b) S.I. 1977/759, there are no amending instruments.

(c) if only one person has been appointed under the said paragraph 3(5), that person;

“complaint” means a complaint to which Part IX of the Act of 1984 applies;

“hearing” has the meaning assigned thereto by Rule 10(1);

“inquiry” means an inquiry held in pursuance of paragraph 3(1) of Schedule 5 to the Act;

“original hearing” means the hearing at the conclusion of which the appellant was found guilty of the charge as respects which the appeal is brought;

“senior officer” means a chief constable or other senior officer within the meaning of the Police (Discipline) (Senior Officers) Regulations 1985(a);

“referred matter” means a matter referred to the Police Complaints Authority under section 88 of the Act of 1984;

“supporting statement” has the meaning assigned thereto by Rule 4(3) and, accordingly, means such a written statement as is mentioned in paragraphs 5, 6 and 7 of the notice of appeal set out in the Schedule to these Rules.

(2) In these Rules, except where the context otherwise requires, any reference to a Rule shall be construed as a reference to a Rule contained in these Rules and any reference in a Rule to a paragraph shall be construed as a reference to a paragraph of that Rule.

#### *Notice of appeal*

4.—(1) An appeal under section 37 of the Act shall be instituted by the appellant giving the Secretary of State written notice of appeal, in the form set out in the Schedule to these Rules or a form to the like effect with, where the appellant is a member of the metropolitan police force or a senior officer, such modifications as the case may require.

(2) The notice of appeal shall be given within the period of 22 days beginning with the day on which the appellant was notified in writing of the relevant decision.

In this and the next following paragraph the expression “relevant decision” means the decision as to finding or punishment or both, as the case may be, in relation to the disciplinary charge which was preferred against the appellant, except that where there is a right of appeal from such decision to some other person it means the decision of that other person.

(3) If the appellant does not annex to the notice of appeal all the written statements mentioned in paragraphs 5, 6 and 7 thereof (hereinafter referred to as “the supporting statements”), he shall supply the Secretary of State with the statements not annexed to the notice of appeal within the period of 50 days beginning with the day on which he was notified in writing of the relevant

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(a) S.I. 1985/519.

decision; and, if he fails to do so, the Secretary of State shall be entitled to treat the notice of appeal as having been withdrawn and no further action in connection with the appeal shall be taken.

(4) The appellant shall send copies of the notice of appeal and of the supporting statements—

(a) within the period within which the notice falls to be given under paragraph (2) or, as the case may be, within which the statements fall to be supplied under paragraph (3), to the chief officer of the police force to which he belongs, and

(b) if and when so required by the Secretary of State, to such other person as is the respondent to the appeal by virtue of a direction given under paragraph 2(2) of Schedule 5 to the Act,

except that, where the appellant is a senior officer, sub-paragraph (b) above shall not apply and, save in the case of a member of the metropolitan police force, sub-paragraph (a) shall have effect as if the reference therein to the chief officer were a reference to the police authority.

(5) 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 so to do, he may extend either or both of the periods mentioned in paragraphs (2) and (3) and, in such case, this Rule shall have effect as if for the period in question there were substituted such extended period as he may specify.

*Statement by respondent*

5.—(1) The respondent, when so required by the Secretary of State, shall send him a written statement as to whether or not he desires to oppose the appeal and, where he desires to oppose it, as to—

(a) the facts and contentions on which he relies and the documentary or other evidence, if any, which he desires to submit;

(b) whether, in the event of an appeal tribunal being appointed and evidence heard, he desires to appear by a legal or other representative, and

(c) whether (unless the appeal is against punishment only), in such event, the hearing would be one to which Rule 14 applies and, if so, the name and address of the complainant within the meaning of that Rule.

(2) The respondent, if so required by the Secretary of State, shall also send him such number of copies as he may require of—

(a) the statement referred to in paragraph (1), and

(b) such papers, reports, records and other documents as the Secretary of State may specify.

(3) The respondent shall send to the appellant—

(a) a copy of the statement referred to in paragraph (1), and

(b) a list of the documents copies of which have been sent to the Secretary of State in accordance with paragraph (2)(b) together with copies of all such documents save in so far as they have previously been given to the appellant.

*Documents to be sent to appeal tribunal*

6.—(1) Where the Secretary of State appoints an appeal tribunal to hold an inquiry he shall send to each member thereof—

- (a) copies of the notice of appeal and of the supporting statements, and
- (b) subject to paragraph (2), a copy of the respondent's statement referred to in Rule 5(1) and of each document a copy of which has been sent to the Secretary of State in accordance with Rule 5(2)(b).

(2) Where, as respects a particular charge, the appeal is against both finding and punishment the Secretary of State shall, so far as is practicable, withhold so much of the statement and documents mentioned in paragraph (1)(b) as appears to him to relate to the appellant's general character and record of police service until the appeal tribunal has reached a decision as to the finding and is about to consider the question of punishment.

*Withdrawal and amendment of notice of appeal etc.*

7.—(1) At any time before an appeal is decided by the Secretary of State he may, on written application in that behalf, allow the appellant to withdraw his notice of appeal and, accordingly, where he so allows no further action in connection with the appeal shall be taken.

(2) Rule 4(4) shall apply in relation to a written application made for the purposes of paragraph (1) as it applies in relation to a notice of appeal and where the Secretary of State has appointed an appeal tribunal to hold an inquiry and it has not, to the knowledge of the appellant, reported to the Secretary of State, the appellant shall also send to the chairman of the tribunal a copy of the written application.

(3) Subject to paragraph (4), at any time before an appeal is decided by the Secretary of State he may, in his discretion and subject to such conditions, if any, as he thinks fit, allow—

- (a) the appellant to amend his notice of appeal or any of the supporting statements;
- (b) the respondent to amend his statement under Rule 5(1) or the documentary material sent to the Secretary of State in accordance with Rule 5(2)(b).

(4) Where the Secretary of State has appointed an appeal tribunal to hold an inquiry and it has not reported to him, the powers conferred by paragraph (3) shall not be exercisable by him but shall be exercisable by the chairman of the tribunal.

*Form of inquiry*

8. Where, as respects a particular charge, the appeal is against both finding and punishment, then, as respects that charge, a hearing held under paragraph 3(8) or (9) of the said Schedule 5 to the Act shall be by way of a rehearing of that charge at the discretion of the tribunal or if the Secretary of State so directs.

*Oral representations*

9.—(1) So far as applicable, and subject to any necessary modifications, the provisions of Rules 10 and 11 shall apply in relation to the hearing of any

oral representations under paragraph 3(10) of Schedule 5 to the Act as they apply in relation to a hearing held under paragraph 3(8) or (9) of the said Schedule 5.

(2) The appellant and the respondent shall be entitled to be represented at the hearing of such oral representations as if it were a hearing held under paragraph 3(8) or (9) of the said Schedule 5.

*Procedure at hearing*

**10.**—(1) This Rule and Rules 11 to 15 shall apply where the Secretary of State appoints an appeal tribunal to hold an inquiry and, under paragraph 3(8) or (9) of Schedule 5 to the Act, a hearing falls to be held (hereinafter referred to as “the hearing”).

(2) After consulting the chairman of the tribunal, the Secretary of State shall fix the day for the opening of the hearing and shall cause notice thereof to be sent to the appellant and the respondent not less than 28 days before the day in question so, however, that with the agreement of the parties shorter notice may be given.

(3) It shall be within the discretion of the tribunal to proceed with the hearing in the absence of either party, whether represented or not, if it appears to be just and proper so to do, and to adjourn it from time to time as may appear necessary for the due hearing of the case.

(4) Subject to these Rules, the procedure at a hearing shall be determined by the tribunal.

*Hearing to be in private*

**11.**—(1) Unless the Secretary of State otherwise directs, the hearing shall be held in private:

Provided that it shall be within the discretion of the appeal tribunal to allow such person or persons as it considers desirable to attend the whole or such part of the hearing as it may think fit.

(2) Notwithstanding that the Secretary of State has directed that a hearing should be held in public or that the appeal tribunal has allowed a person to attend the hearing, where it appears to the tribunal that a witness may in giving evidence disclose information which, in the public interest, ought not to be disclosed publicly, the tribunal shall require any member of the public present to withdraw while that evidence is given.

*Evidence at hearing*

**12.**—(1) Unless the tribunal otherwise determines, the evidence adduced by the respondent shall be given first.

(2) All oral evidence given at the hearing shall be given on oath.

(3) All witnesses giving evidence at the hearing shall be subject to examination and cross-examination.

(4) Any question as to whether any evidence is admissible, or whether any question should or should not be put to a witness, shall be determined by the appeal tribunal.

(5) A verbatim record of the evidence given at the hearing shall be taken and kept for a period of not less than three years from the date of the end of the hearing unless either the Secretary of State or the chairman of the tribunal requests that a transcription of the record be made.

*Statements in lieu of oral evidence*

13.—(1) Subject to the provisions of this Rule, the appeal tribunal may admit evidence by way of a written statement made by a person, notwithstanding that he may not be called as a witness, so, however, that evidence shall not be admissible hereunder if it would not have been admissible had it been given orally.

(2) For the purposes hereof, a written statement purporting to be made and signed by a person and witnessed by another person shall be presumed to have been made by that person unless the contrary be shown.

(3) If either the appellant or the respondent (in this Rule referred to as “the parties”) proposes to adduce written evidence in pursuance of this Rule at a hearing, he shall give the other party a copy of the statement at least 21 days before the date of that hearing and invite that party to agree or object, in writing, to the admission of the statement in evidence without the maker thereof being called as a witness and being available for cross-examination and, if that party within 14 days from the receipt by him of the copy of the statement has so objected, the statement shall only be admitted in evidence if the maker thereof is called and is available as aforesaid:

Provided that if the parties in writing so agree in the case of a particular statement, this paragraph shall have effect in relation to that statement as though—

(a) the reference to a period of 21 days were a reference to such shorter period as they may agree;

(b) the reference to a period of 14 days were a reference to such shorter period, expiring before the date of the hearing, as they may agree.

(4) Where, notwithstanding that the other party has not so objected and a written statement has been admitted in evidence without the maker thereof being called and being available as aforesaid, the appeal tribunal is of the opinion that oral evidence should be given, it may request that the maker be called as a witness and, in such case, unless the maker gives oral evidence, the tribunal shall be entitled to disregard the written evidence.

(5) Nothing in this Rule shall prejudice the admission of written evidence which would be admissible apart from the provisions thereof.

*Attendance of complainant at hearing*

14.—(1) This Rule shall apply in relation to a hearing where the charge as respects which the appeal is brought is in respect of a complaint or referred matter and the appeal is not against punishment only.

(2) The Secretary of State shall cause notice of the opening of the hearing to be sent to the complainant, at the same time as such notice is sent to the respondent in pursuance of Rule 10(2).

(3) Notwithstanding anything in Rule 11(1) but subject to paragraph (5), the appeal tribunal shall allow the complainant to attend the hearing while witnesses are being examined, or cross-examined, on the facts alleged in the charge and, if the tribunal considers it appropriate so to do on account of the age of the complainant, or otherwise, shall allow him to be accompanied by a personal friend or relative who is not to be called as a witness at the inquiry:

Provided that—

- (a) where the complainant is to be called as a witness at the hearing he and any person allowed to accompany him shall not be allowed to attend before he gives his evidence, and
- (b) where it appears to the appeal tribunal that a witness may in giving evidence disclose information which, in the public interest, ought not to be disclosed to a member of the public, it shall require the complainant and any person allowed to accompany him to withdraw while that evidence is given.

(4) Where the appellant gives evidence, then, after the person representing the respondent has had an opportunity of cross-examining him, the chairman of the tribunal shall put to him any questions which the complainant requests should be so put and might have been properly so put by way of cross-examination and, at his discretion, may allow the complainant himself to put such questions to the accused.

(5) Subject as aforesaid, the complainant and any person allowed to accompany him shall neither intervene in, nor interrupt the hearing; and if he or such a person should behave in a disorderly or abusive manner, or otherwise misconduct himself, the chairman of the tribunal may exclude him from the remainder of the hearing.

*Report of appeal tribunal*

**15.—**(1) The appeal tribunal shall draw up and submit to the Secretary of State, as soon as may be after the completion of the inquiry, a report, in triplicate, of its findings, setting out—

- (a) a statement of the facts (so far as material to the case) found to be admitted or proved, either in the course of a hearing or the consideration by the tribunal of the documents sent to it in accordance with Rule 6;
- (b) except where the appeal is against punishment only, a statement as to the charge or charges so found to be proved;
- (c) a statement as to whether the punishment was, in its opinion, just and proper having regard to all the circumstances before it and, if not, whether any and if so what, punishment should, in its opinion, be substituted therefor;
- (d) its observations on any matter with which the Secretary of State required it to deal under paragraph 3(6) of Schedule 5 to the Act and on any other matter which it desires to bring to his notice.

(2) The appeal tribunal shall send to the Secretary of State, with its report—

- (a) the documents sent to it in accordance with Rule 6 and any other documents furnished in connection with the inquiry, and

- (b) where there has been a hearing—
- (i) where the chairman of the tribunal has requested that it be made, the transcription thereof; and (without prejudice to sub-paragraph (a))
  - (ii) the documents, if any, produced at the hearing.

*Further investigation by appeal tribunal*

**16.** Where the Secretary of State remits a case for further investigation by an appeal tribunal, in accordance with paragraph 3(13) of Schedule 5 to the Act, these Rules shall apply in relation to that further investigation, subject to any necessary modifications, as they apply in relation to an inquiry.

*Service of documents*

**17.** Where any notice or other document is required by these Rules to be submitted or sent by or to the Secretary of State or any other person or authority, it shall be a sufficient compliance with these Rules if such notice or other document is sent, by registered letter post or the recorded delivery service, within such time, if any, as is prescribed by these Rules, in a letter directed to the person or authority for whom it is intended at his or its usual office or other ordinary address or, in the case of a notice or other document intended for the Secretary of State, to the Secretary of State at the Home Office in London.

*Determination of questions*

**18.** 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.

Home Office.

2nd April 1985.

*Leon Brittan,*  
One of Her Majesty's Principal  
Secretaries of State.



## SCHEDULE

FORM OF NOTICE OF APPEAL TO THE  
SECRETARY OF STATE

1. I, ..... (name and number) was, on ..... (insert date) and while holding the rank of ..... in the ..... police force, found to have committed the disciplinary offence(s) mentioned in the first column below with which I had been charged and was punished therefor as mentioned in the second column below, [such punishment(s) being varied on appeal to the punishment(s) mentioned in the third column below]:

Offence proved	Punishment therefor	Varied on appeal to
1. ....	1. ....	1. ....
2. ....	2. ....	2. ....
3. ....	3. ....	3. ....

\*2.(a)(i) The above charge(s) were found proved and the punishment(s) indicated were imposed by the deputy chief constable. The finding(s)/punishment(s) were confirmed/varied as indicated on appeal to the chief constable.

2.(a)(ii) I was notified in writing of the said punishment(s) on ..... (insert date) and of the said confirmation variation(s) on ..... (insert date)

2.(b)(i) The hearing of the charge(s) was conducted and the finding(s) reached by [the chief constable of ..... police force] [a tribunal within the meaning of section 94 of the Police and Criminal Evidence Act 1984 of which the chairman was the chief constable of ..... police force] [a tribunal established under Regulation 12(1) of the Police (Discipline) (Senior Officers) Regulations 1985]

2.(b)(ii) Punishment was imposed by [the said chief constable] [the chief constable of ..... police force] [the police authority for the ..... police force area]

2.(b)(iii) I was notified in writing of the said punishment on ..... (insert date)

3. I desire to appeal against [the finding(s) and punishment(s) on charges numbered ..... above] [the punishment(s) on charges numbered ..... above but not against the relevant finding(s)]

4. I [desire] [do not desire] to submit additional evidence not taken into consideration at the original hearing of the charge(s) against me.

5. I [annex] [do not annex] a concise statement (marked A) of the grounds on which I desire to appeal.

6. I [annex] [do not annex] a statement (marked B) comprising either a list of the documents which I desire to submit in support of the appeal (other than documents produced at the original hearing) or a statement that I do not wish to submit any such documents.

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\* Complete either 2. (a)(i) and (ii) or 2. (b)(i), (ii) and (iii).

7. I [annex] [do not annex] a statement (marked C) comprising either a list of the names and addresses of the witnesses I desire to call in support of my appeal and a concise statement of the facts which each witness will prove or a statement that I do not desire to call any witnesses.

8. I understand that any such statement as is referred to in paragraph 5, 6 or 7 which is not annexed must be supplied to the Secretary of State within the period of 50 days beginning with the date mentioned in paragraph 2(a)(ii) or 2(b)(iii).

9. At the date on which punishment was [imposed] [varied on appeal] I was in receipt of pay at the rate of £..... a year.

10. [I was suspended on ..... (insert date) and was still suspended immediately before punishment was imposed.]

11. I declare that a copy of this notice of appeal and of any statement annexed thereto has been sent to the [chief constable of my police force] [police authority for my police force area]

Signature.....  
Address.....  
.....

Date..... 19.....

## EXPLANATORY NOTE

*(This Note is not part of the Rules.)*

These Rules supersede the Police (Appeals) Rules 1977 ("the 1977 Rules"). They are expressed to come into operation on 29th April 1985. The changes of substance from the 1977 Rules are described below.

The definition of "referred matter" in Rule 3(1) takes account of the fact that it is not only a complaint (made under Part IX of the Police and Criminal Evidence Act 1984 ("the 1984 Act") which may be referred to the Police Complaints Authority but also, under section 88 of that Act, certain other matters which appear to indicate that an offence against discipline may have been committed.

By virtue of Rule 4(2), where there is an initial right of appeal to a person other than the Secretary of State against the decision as to finding or punishment, or both, it is that other persons's decision which is to be treated as the relevant decision for the purposes of an appeal conducted under the Rules. This takes account of section 101 of the 1984 Act whereby the chief constable's disciplinary functions may be delegated to a deputy chief constable (or in the City of London police force, to an assistant commissioner of police), subject to an appeal to the chief constable.

Rule 6(2) stipulates that the Secretary of State shall, where he appoints an appeal tribunal to inquire into both finding and punishment, withhold from the tribunal so much of the evidence in the case as appears to him to relate to the appellant's character and record of police service until the tribunal has reached a decision as to finding and is about to consider the question of punishment.

Rule 8, which deals with the form of inquiry, omits certain provisions of the 1977 Rules dealing with the taking of evidence which have been superseded by paragraphs 3(8), (9) and (10) of Schedule 5 to the Police Act 1964 (as substituted by section 103(2) of the 1984 Act).

Rule 9(2) provides for the appellant and the respondent to be represented for the purpose of making oral representations prior to any decision of the tribunal as to holding a hearing, in the same way as at the hearing itself.

The Rules omit those provisions of the 1977 Rules dealing with representation at the hearing which have been superseded by paragraph 3(11) of Schedule 5 of the 1964 Act (as so substituted).

Rule 12(5) provides for a verbatim record of the evidence at the hearing to be kept for a period of not less than three years and a transcription of the record to be made if the Secretary of State or the chairman of the tribunal so requests.

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