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STATUTORY INSTRUMENTS

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**1996 No. 1643 (S.139)**

**POLICE**

**The Police (Efficiency) (Scotland) Regulations 1996**

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| <i>Made</i>                   | - - - - | <i>19th June 1996</i>  |
| <i>Laid before Parliament</i> |         | <i>11th July 1996</i>  |
| <i>Coming into force</i>      | - -     | <i>1st August 1996</i> |

The Secretary of State, in exercise of the powers conferred on him by section 26 of the Police (Scotland) Act 1967(1) and of all other powers enabling him in that behalf, after taking into consideration any representations made by the Police Advisory Board for Scotland following the submission of a draft of the Regulations in accordance with section 26(9) of the said Act of 1967, hereby makes the following Regulations

**PART I**

**general**

**Citation and commencement**

1. These Regulations may be cited as the Police (Efficiency) (Scotland) Regulations 1996 and shall come into force on 1st August 1996.

**Interpretation**

2.—(1) Unless the context otherwise requires, in these Regulations—

“the assistant chief constable” means a constable of that rank who is required by the chief constable to exercise any function of the assistant chief constable specified in these Regulations in relation to any constable in respect of whom proceedings under these Regulations are, or are proposed to be, taken and shall include a constable acting in place of that assistant chief constable;

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(1) 1967 c. 77; section 26(9) was amended by the Police Negotiating Board Act 1980 (c. 10), section 2(4); section 26(1A) and (10) were inserted by the Police and Criminal Evidence Act 1984 (c. 60), section 111; section 26(1) was amended by the Police and Magistrates' Courts Act 1994 (c. 29) (“the 1994 Act”), section 53(1); section 26(2) was amended by the 1994 Act, section 52(2) and Schedule 9; section 26(2A) to (2C) were inserted by the 1994 Act, section 52(3) which came into force for certain purposes only on 8th August 1994 (see S.I. 1994/2025) and 1st January 1995 (see S.I. 1994/3075) and for all other purposes on 1st August 1996 (see S.I. 1996/1646); section 26(5A) was inserted by the 1994 Act, section 53(1); section 26(7) was repealed by the 1994 Act, section 52(4) and Schedule 9.

“the constable” means a constable to whom these Regulations apply and in respect of whom proceedings under these Regulations are taken;

“countersigning officer” means an officer having supervisory responsibility and who is senior in rank to the constable in respect of whom proceedings under these Regulations are, or are proposed to be, taken;

“first interview” means an interview arranged in terms of regulation 5;

“inefficiency hearing” means a hearing arranged in terms of regulation 13;

“interviewing officer” means the constable who conducts an interview arranged in terms of regulation 5;

“personnel officer” means an officer employed under section 9 of the Police (Scotland) Act 1967(2) or a constable who, in either case, has responsibility for personnel matters relating to constables;

“police force” means a police force maintained under section 1 of the Police (Scotland) Act 1967(3);

“reporting officer” means the constable of a rank not lower than that of sergeant who has the immediate supervisory responsibility for a constable in respect of whom proceedings under these Regulations are taken;

“second interview” means an interview arranged in terms of regulation 9;

“senior officer” means—

- (a) the officer who is for the time being—
  - (i) the supervising officer of the person who is, in relation to the constable in respect of whom proceedings under these Regulations are taken, the countersigning officer; or
  - (ii) the commander of the division to which that constable is assigned; or
- (b) where the supervising officer mentioned in paragraph (a)(i) of this definition is of the same rank as the commander of the division to which the constable is assigned, that commander.

(2) In these Regulations, any reference to a numbered regulation is a reference to the regulation bearing that number in these Regulations, and any reference to a numbered paragraph is a reference to the paragraph bearing that number in the regulation in which the reference appears.

## **Application**

3. These Regulations shall apply only in relation to—
  - (a) constables below the rank of assistant chief constable; and
  - (b) in the case of any constable in the rank of constable, a constable of that rank if he has completed his period of probation.

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(2) Section 9 was substituted by the Police and Magistrates' Courts Act 1994 (c. 29), section 49.

(3) Section 1(1) was substituted by the Local Government (Scotland) Act 1973 (c. 65), section 146(2) and amended by the Local Government etc. (Scotland) Act 1994 (c. 39), Schedule 13, paragraph 71(2).

## PART 2

### first interview

#### **Circumstances in which a first interview may be required**

4. Where the reporting officer for a constable is of the opinion that the constable's performance is unsatisfactory, he may require the constable to attend an interview (in these Regulations referred to as a first interview) to discuss the constable's performance.

#### **Arrangement of first interview**

5.—(1) If the reporting officer decides to require a constable to attend a first interview, he shall—

- (a) send a notice in writing to the constable—
  - (i) requiring him to attend, at a specified time and place, an interview with the reporting officer or, if the constable so requests but subject to paragraph (4), the countersigning officer;
  - (ii) stating the reasons why the interview is required; and
  - (iii) informing him that he may be accompanied at the interview by a constable selected by him; and
- (b) send a copy of the notice to the countersigning officer.

(2) A constable who receives a notice pursuant to paragraph (1) may, not later than 7 days (or such longer period as the reporting officer may permit when sending the notice in terms of paragraph (1) (a)) after the date on which the notice was sent to him, request by notice in writing to the reporting officer that the interview be conducted by the countersigning officer.

(3) If the reporting officer receives notification in terms of paragraph (2), he shall, subject to paragraph (4), arrange for the interview to be conducted by the countersigning officer.

(4) In any case where it is not reasonably practicable for the countersigning officer to conduct the first interview, another constable of the same or higher rank may conduct the interview in his place.

#### **Procedure at first interview**

6.—(1) The following provisions of this regulation shall apply to the procedure to be followed at the first interview.

- (2) The interviewing officer shall—
  - (a) explain to the constable who has been required to attend the interview the reasons why the reporting officer is of the opinion that the constable's performance is unsatisfactory; and
  - (b) provide the constable with a full opportunity of making representations in response.
- (3) If, after considering any representations made by the constable, the interviewing officer is satisfied that the constable's performance has been unsatisfactory, he shall—
  - (a) inform the constable in what respect his performance as a constable is considered unsatisfactory;
  - (b) warn the constable that he is required to improve his performance in any such respect;
  - (c) inform the constable of any specific action which he is required to take to achieve such an improvement; and
  - (d) warn the constable that if a sufficient improvement is not made within such period as the interviewing officer shall specify, he may be required to attend a second interview in accordance with regulation 9.

(4) The interviewing officer may, if he considers it appropriate, recommend that the constable seek assistance in relation to any matter affecting his health or welfare.

(5) The interviewing officer may adjourn the interview to a specified later time or date if it appears to him necessary or expedient to do so.

#### **Procedure following first interview**

7.—(1) The interviewing officer shall, not later than 7 days after the date of the conclusion of the first interview—

- (a) cause to be prepared a written record of the substance of the matters discussed during the interview; and
- (b) send a copy of that record to the constable together with a notice in writing informing him that he may submit written comments not later than 7 days after the date on which the copy is sent.

(2) Subject to paragraph (3), the constable shall be entitled to submit written comments in relation to the record of the interview to the interviewing officer not later than 7 days after the date on which it was sent.

(3) The interviewing officer may, on the application of the constable, extend the period specified in paragraph (2) if he is satisfied it is appropriate to do so.

(4) The interviewing officer shall send a copy of the record of the interview, and of any written comments of the constable, to—

- (a) the senior officer;
- (b) the officer in charge of personnel matters; and
- (c) if the interview was conducted by the reporting officer, the countersigning officer; or
- (d) if the interview was conducted by the countersigning officer, the reporting officer; or
- (e) if the interview was conducted by any other officer, to the reporting officer and the countersigning officer.

## **PART 3**

### **second interview**

#### **Circumstances in which a second interview may be required**

8. Where the reporting officer is of the opinion that a constable who was warned in terms of regulation 6(3) that he was required to improve his performance has, at the end of the period specified by the interviewing officer in terms of regulation 6(3), failed to make a sufficient improvement in his performance, he may, with the agreement of the countersigning officer, require the constable to attend a further interview (in these Regulations referred to as a second interview) to discuss the constable's performance.

#### **Arrangement of second interview**

9. If the reporting officer with the agreement of the countersigning officer decides to require a constable to attend a second interview, he shall—

- (a) send a notice in writing to the constable—
  - (i) requiring him to attend, at a specified time and place, an interview with the senior officer and a personnel officer;

- (ii) stating the reasons why the interview is required; and
  - (iii) informing him that he may be accompanied at the interview by a constable selected by him; and
- (b) send a copy of the notice to the countersigning officer, to the senior officer and to the personnel officer.

#### **Procedure at second interview**

**10.**—(1) The following provisions of this regulation shall apply to the procedure to be followed at a second interview.

- (2) The interview shall be conducted by the senior officer and the personnel officer.
- (3) The senior officer shall—
- (a) explain to the constable the reasons why the reporting officer and the countersigning officer are of the opinion that the constable has failed to make a sufficient improvement in his performance; and
  - (b) provide the constable with a full opportunity of making representations in response.
- (4) If, after considering any representations made by the constable, the senior officer is satisfied that the constable's performance has been unsatisfactory during the period specified by the interviewing officer in terms of regulation 6(3), he shall—
- (a) inform the constable in what respect his performance as a constable is considered unsatisfactory;
  - (b) warn the constable that he is required to improve his performance in any such respect;
  - (c) inform the constable of any specific action which he is required to take to achieve such an improvement; and
  - (d) warn the constable that if a sufficient improvement is not made within such period as the senior officer shall specify, he may be required to attend an inefficiency hearing at which the chairman will have the power, if appropriate, to require the constable to resign from the force or to order reduction in rank.
- (5) The senior officer may adjourn the interview to a specified later time or date if it appears to him necessary or expedient to do so.

#### **Procedure following second interview**

**11.**—(1) The senior officer shall, not later than 7 days after the conclusion of the second interview—

- (a) in consultation with the personnel officer, prepare a written record of the substance of the matters discussed during the interview; and
  - (b) send a copy of that record to the constable together with a notice in writing—
    - (i) if a warning was given in terms of regulation 10(4), confirming the terms of that warning; and
    - (ii) informing him that he may submit written comments not later than 7 days after the date on which the copy is sent.
- (2) Subject to paragraph (3), the constable shall be entitled to submit written comments in relation to the record of the interview to the senior officer not later than 7 days after the date on which it was sent.
- (3) The senior officer may, on the application of the constable, extend the period specified in paragraph (2) if he is satisfied that it is appropriate to do so.

(4) If the senior officer receives any written comments in terms of paragraph (2), he shall ensure that they are retained with the record of the interview.

(5) The senior officer shall send a copy of the record of the interview, and of any written comments by the constable, to the reporting officer and to the countersigning officer.

## PART 4

### inefficiency hearing

#### **Assessment of performance following second interview**

**12.**—(1) Not later than 14 days after the date on which the period specified in regulation 10(4)(d) ends—

- (a) the reporting officer and the countersigning officer shall assess the constable's performance during that period; and
- (b) either a constable or a personnel officer authorised for the purpose shall inform the constable in writing whether the reporting officer and the countersigning officer are of the opinion that there has been a sufficient improvement in performance during that period.

(2) If the reporting officer and the countersigning officer are of the opinion that there has been an insufficient improvement, the constable shall also, within the period of 14 days mentioned in paragraph (1), be informed in writing that he will be required to attend, at a time (being not sooner than 21 days, but not later than 42 days, after the date on which the notification under this paragraph is sent) to be notified separately, a hearing (in these Regulations referred to as an inefficiency hearing) to consider his performance.

#### **Arrangement of an inefficiency hearing**

**13.** A constable or personnel officer authorised for the purpose shall, not less than 21 days before the date fixed for the hearing, send a notice in writing to the constable—

- (a) requiring him to attend an inefficiency hearing at a specified time and place;
- (b) stating the reasons why the hearing is required;
- (c) informing him that he may be represented—
  - (i) either by an advocate or a solicitor; or
  - (ii) by a constable of a police force selected by him who may be a representative of an association representing constables; and
- (d) warning him of the powers to make a disposal which are available to the chairman of the inefficiency hearing in the event that the chairman finds that the constable's performance has been unsatisfactory.

#### **Procedure at an inefficiency hearing**

**14.**—(1) The inefficiency hearing shall be conducted by a constable who is appointed for the purpose by the assistant chief constable and who is referred to in these Regulations as the chairman of the inefficiency hearing.

(2) The chairman shall be—

- (a) a constable of the police force concerned or, if the chief constable of some other force is requested by the assistant chief constable and agrees to provide a constable for the purpose, a constable of that other force;

- (b) of at least the rank of superintendent and, where the constable who is required to attend the inefficiency hearing is of the rank of superintendent, of the rank of assistant chief constable; and
  - (c) a person who has neither attended nor otherwise been involved with the first interview or the second interview held in relation to the constable required to attend the inefficiency hearing.
- (3) The chairman may be assisted by up to two other constables who are also of at least the rank of superintendent who shall act as assessors.
- (4) As soon as the assistant chief constable has appointed the chairman, he shall arrange for a copy of any document—
- (a) which was available to the interviewing officer in relation to the first interview;
  - (b) which was available to the senior officer in relation to the second interview; and
  - (c) which was prepared or submitted in terms of regulation 11, 12 or 13.
- to be made available to the chairman.
- (5) Subject to the provisions of this regulation, the procedure at the inefficiency hearing shall be such as the chairman may determine.
- (6) The inefficiency hearing shall be held in private.
- (7) The chairman shall afford the constable a full opportunity of making representations in relation to the matters referred to in the notice sent in terms of regulation 13.
- (8) The chairman shall prepare a written note summarising the proceedings at the inefficiency hearing.
- (9) Subject to regulation 15(1), if the constable does not attend the inefficiency hearing or at any adjournment thereof, the hearing may be proceeded with and concluded in his absence if it appears to the chairman just and proper to do so.
- (10) Where, owing to the absence of the constable, it is not possible to comply with the whole or any part of the procedure described in this regulation or regulation 15, the case may be proceeded with as if that procedure had been complied with.

### **Postponement or adjournment of an inefficiency hearing**

**15.**—(1) If the constable intimates to the chairman that he will be unable to attend the inefficiency hearing, or if in the absence of such intimation does not attend the hearing, and the chairman is satisfied that a good reason for such non-attendance is given by, or on behalf of, the constable, he shall postpone, or as the case may be adjourn, the hearing.

(2) The chairman may also adjourn the inefficiency hearing if, having given the constable the opportunity of making representations in terms of regulation 14(7), he considers it appropriate to allow a further period for assessment of the constable's performance.

(3) Where the chairman makes an adjournment for the purpose of paragraph (2), he shall—

- (a) specify a period (not exceeding 3 months) during which the reporting officer and the countersigning officer shall assess the constable's performance;
- (b) fix a date on which the hearing shall resume; and
- (c) require the constable to attend on that date at a specified place.

(4) Not later than 14 days after the date on which the period for further assessment specified by the chairman in terms of paragraph (3)(a) ends—

- (a) the reporting officer and the countersigning officer shall prepare a report containing their assessment of the constable's performance during that period; and

- (b) the countersigning officer shall send the report to the chairman of the inefficiency hearing and a copy of the report to the constable.
- (5) At the continuation of the inefficiency hearing the chairman shall afford a full opportunity of making representations in relation to the matters referred to in the report mentioned in paragraph (4).
- (6) Where at the time the report mentioned in paragraph (4) is sent in terms of paragraph (4)(b) the chairman of the inefficiency hearing is absent, incapacitated or suspended from duty and it is likely that his absence, incapacity or suspension will continue for a period of more than 28 days, the assistant chief constable shall arrange for another constable, being a constable who would have been eligible for appointment as chairman of the inefficiency hearing in terms of regulation 14(1) and (2) in relation to the hearing in question, to carry out in relation to the constable the functions of the chairman of the inefficiency hearing specified in paragraph (5) and in regulations 16 and 17 and, accordingly, in relation to the constable whose performance is under consideration, references to the chairman of the inefficiency hearing in regulations 18 to 21 shall be construed as including any constable appointed in accordance with this paragraph to carry out functions of the chairman of the inefficiency hearing.

### **Finding**

**16.—**(1) Subject to paragraph (2), at the conclusion of the inefficiency hearing, the chairman shall reach a decision whether the constable's performance—

- (a) in the period referred to in regulation 10(4)(d); or
- (b) where the hearing was adjourned under regulation 15(2), over the whole of the period comprising the period referred to in regulation 10(4)(d) and the further period specified by the chairman in terms of regulation 15(3)(a),

has been satisfactory or not.

(2) The chairman may, at the conclusion of the hearing, defer reaching his decision until a later time or date if it appears necessary to do so.

(3) The decision of the chairman shall state the finding and, where he has found that the constable's performance has not been satisfactory, his reasons as well as any disposal which he makes in accordance with regulation 17.

- (4) After recording his decision in writing, the chairman shall forthwith send a copy of it to—
  - (a) the constable;
  - (b) the assistant chief constable; and
  - (c) the personnel officer.

### **Disposal**

**17.—**(1) If the chairman of the inefficiency hearing makes a finding that the constable's performance during the relevant period has been unsatisfactory, he may—

- (a) require the constable to resign from the force either forthwith or on such later date as may be specified;
- (b) order reduction in his rank with immediate effect; or
- (c) issue a written warning to the constable that unless a sufficient improvement in his performance is made within such period as the chairman shall specify, he may, following consideration of his performance during that period in accordance with regulation 18, be required to resign from the force.

(2) Where the disposal under paragraph (1)(a) is made and where the constable has not resigned from the force in accordance with the requirement, then the effect of the decision shall be to dismiss the constable from the force either forthwith or on the date which was specified by the chairman.

### **Assessment of performance following inefficiency hearing**

**18.**—(1) This regulation applies where the constable has been given a written warning in terms of paragraph (1)(c) of regulation 17.

(2) Not later than 14 days after the end of the period specified in the warning, the reporting officer and the countersigning officer shall—

- (a) assess the constable's performance during that period;
- (b) cause to be prepared a report on the performance which shall be submitted to the chairman of the inefficiency hearing; and
- (c) send a copy of the report to the constable and inform him that he may submit written comments to the chairman of the inefficiency hearing not later than 7 days after the date on which it was sent.

(3) The chairman of the inefficiency hearing—

- (a) shall consider the report and any recommendation contained in it;
- (b) shall consider any written comments made by or on behalf of the constable by virtue of paragraph (2)(c); and
- (c) if he is satisfied that there has been an insufficient improvement in the constable's performance, shall require the constable to resign from the force with effect from the end of the period of one month after the date on which notification of the decision is made; or
- (d) if he is satisfied that there has been a sufficient improvement in performance, shall record that decision and direct that no further proceedings shall be taken under these Regulations in relation to the period in question.

(4) The chairman of the inefficiency hearing shall record his decision in writing and shall forthwith send a copy of it to—

- (a) the constable;
- (b) the assistant chief constable;
- (c) the personnel officer;
- (d) the countersigning officer; and
- (e) the reporting officer.

(5) Where the chairman of the inefficiency hearing requires the constable to resign pursuant to paragraph (3)(c) and the constable has not resigned from the force in accordance with the requirement, then the effect of the decision shall be to dismiss the constable from the force with effect from the end of the period of one month after the date on which notification of the decision was made in terms of paragraph (4).

(6) Where at the time the report mentioned in paragraph (2)(b) is submitted the chairman of the inefficiency hearing is absent, incapacitated or suspended from duty and it is likely that his absence, incapacity or suspension will continue for a period of more than 28 days, the assistant chief constable shall arrange for another constable, being a constable who would have been eligible for appointment as chairman of the inefficiency hearing in terms of regulation 14(1) and (2) in relation to the hearing in question, to carry out in relation to the constable the functions of the chairman of the inefficiency hearing specified in this regulation and, accordingly, in relation to the constable whose performance is under consideration, references to the chairman of the inefficiency hearing in regulations 19 to 21 shall, in relation to an appeal made under regulation 19(2), be construed as including any constable

appointed in accordance with this paragraph to carry out functions of the chairman of the inefficiency hearing.

## PART 5

### appeal to the chief constable

#### Appeal to the chief constable

**19.**—(1) A constable in respect of whom the chairman of the inefficiency hearing made a finding that his performance has been unsatisfactory may appeal to the chief constable in accordance with this regulation against—

- (a) the said finding and the imposition of any disposal; or
- (b) only the imposition of a disposal.

(2) A constable who is required to resign in terms of regulation 18(3)(c) may appeal to the chief constable in accordance with this regulation against such a requirement.

(3) The appeal shall be instituted by the constable giving written notice of appeal to the chief constable specifying whether he is appealing under sub-paragraph (a) or (b) of paragraph (1) or under paragraph (2).

(4) The notice of appeal shall state—

- (a) the name and address of the appellant;
- (b) that the notice is a notice of appeal;
- (c) the date of the relevant finding and disposal or, in the case of an appeal under paragraph (2), the date of the requirement to resign made in terms of regulation 18(3)(c); and
- (d) the grounds upon which the appeal is made.

(5) The appellant shall sign the notice of appeal and shall attach to it a copy of the written decision which is the subject of the appeal.

(6) The appellant shall send a notice of appeal and the copy of the decision to the chief constable not later than 28 days after the date on which notification of the decision was sent in accordance with regulation 16(4) or 18(4).

(7) Where the appellant is unable to send the notice of appeal within the period specified in paragraph (6), he may include in his notice of appeal a request for the appeal to be received late and shall state his reasons why he was unable to send it timeously.

(8) The chief constable may receive a notice of appeal which is late where he is satisfied, by reason of the special circumstances of the case, that it is just and right that the appeal should be entertained after the expiry of the period specified in paragraph (6).

#### Procedure of appeal

**20.**—(1) Where the chief constable considers that it is necessary for the purpose of determining the appeal, he may afford the opportunity to the appellant and to the chairman of the inefficiency hearing of making oral representations in relation to the subject matter of the appeal.

(2) Where the chief constable decides to afford the opportunity to make oral representations, he shall give reasonable notice of the time and place at which those representations may be made.

(3) At any hearing fixed for the purposes of paragraph (1)—

- (a) each of the appellant and the chairman of the inefficiency hearing may be represented by another constable of a police force selected by him or by an advocate or a solicitor; and

- (b) the chief constable may put questions to any of those persons or any representative of them.
- (4) The chief constable may, if he considers it necessary or expedient, adjourn an appeal under regulation 19(1) and request the chairman of the inefficiency hearing held in terms of regulation 14—
  - (a) to provide further information relating to any matter arising from his consideration of the papers; or
  - (b) to carry out a further hearing in relation to any such matters.
- (5) Where the chief constable requests the chairman of the inefficiency hearing to carry out a hearing in relation to any matter as mentioned in paragraph (4), the provisions of regulations 13 (other than paragraph (d)), 14 and 15(1) shall apply to the hearing as they apply to an inefficiency hearing held in terms of regulation 14.
- (6) Where the chief constable requests further information relating to any matter, he shall not have regard to that information unless—
  - (a) the information was available to the constable at the time of the inefficiency hearing; or
  - (b) the constable has been afforded an opportunity to make representations in relation to the information.

#### **Determination of appeal by the chief constable**

- 21.—**(1) In determining the appeal, the chief constable shall have regard to—
- (a) the report of the chairman of the inefficiency hearing and any papers referred to therein;
  - (b) in the case of an appeal under regulation 19(2), the report prepared in terms of, and any written comments made by or on behalf of the constable by virtue of, regulation 18(2), and the written decision of the chairman of the inefficiency hearing made in terms of regulation 18(3) and (4);
  - (c) the notice of appeal submitted in terms of regulation 19(3);
  - (d) any oral representations made by the constable at a hearing arranged in terms of regulation 20(1); and
  - (e) any further information or report obtained following an adjournment in terms of regulation 20(4).
- (2) Subject to paragraph (3), the chief constable shall, unless it is not reasonably practicable to do so, determine the appeal not later than—
- (a) where no hearing has been arranged, 7 days after the date on which he receives the notice of appeal submitted in terms of regulation 19; or
  - (b) where a hearing has been held, within 7 days after the date of that hearing.
- (3) The chief constable shall, in any case, determine the appeal—
- (a) not later than 28 days after the date on which the notice of appeal was sent in terms of regulation 19(3); or
  - (b) where he has asked the chairman of the inefficiency hearing to carry out a further hearing in terms of regulation 20(4)(b), not later than 7 days after the completion of that hearing.
- (4) In determining an appeal under regulation 19(1), the chief constable may—
- (a) if he upholds an appeal under regulation 19(1)(a), quash any finding by the chairman of the inefficiency hearing and any disposal made;
  - (b) if he upholds an appeal under regulation 19(1)(a) but only in relation to the disposal made or if he upholds an appeal under regulation 19(1)(b)—
    - (i) quash any disposal made; or

- (ii) where the disposal was a requirement to resign made under regulation 17(1)(a), vary that disposal by substituting an order of reduction in rank either with immediate effect or with effect on and after such later date as may be specified; or
- (c) dismiss the appeal.
- (5) In determining an appeal under regulation 19(2), the chief constable shall either confirm or quash the requirement to resign.
- (6) The decision of the chief constable shall be recorded in a document which shall contain—
  - (a) the terms of the decision which shall specify any variation of the disposal made by the chairman of the inefficiency hearing; and
  - (b) a statement of the reasons for the decision,
 and shall be signed and dated by the chief constable.
- (7) The chief constable shall forthwith send a copy of the document to the appellant and, if any, his representative and to the chairman of the inefficiency hearing.

## PART 6

### supplemental

#### **Amendment of the Police (Scotland) Regulations 1976**

**22.**—(1) Regulation 14 of the Police (Scotland) Regulations 1976<sup>(4)</sup> is amended in accordance with the following paragraphs of this regulation.

- (2) In regulation 14(2)—
  - (a) in sub-paragraph (h), before the word “punishments” there are inserted the words “disposals or”; and
  - (b) the proviso is omitted.
- (3) After regulation 14(2) there is inserted the following paragraph:—
  - “(2A) The chief constable shall cause to be expunged from the personal record—
    - (a) any record of punishment made in terms of the Discipline Regulations after 3 years free from punishment other than a caution;
    - (b) any record of a disposal made in terms of the Police (Conduct) (Scotland) Regulations 1996<sup>(5)</sup> after 3 years free from any disposal other than a caution; and
    - (c) in the case of any proceedings taken against the constable under the Police (Efficiency) (Scotland) Regulations 1996, any record of proceedings (including any disposal made under those Regulations) after 2 years have elapsed since the date of the last event to take place in terms of those Regulations in relation to any proceedings taken against the constable.”.
- (4) For paragraph (3) of regulation 14 there is substituted the following paragraph:—
  - “(3) Where any such record as is mentioned in paragraph (2A) is expunged from a constable’s personal record, so much of that personal record as relates to any such record shall be destroyed and a new part made out so as not to disclose that the expunged record existed.”.

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<sup>(4)</sup> S.I. 1976/1073, to which there are amendments not relevant to these Regulations.

<sup>(5)</sup> S.I. 1996/1642.

St Andrew's House,  
Edinburgh  
19th June 1996

*James Douglas-Hamilton*  
Minister of State, Scottish Office

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provision with respect to the assessment of the efficiency of constables of police forces in Scotland and establish procedures for cases in which a constable who is not performing satisfactorily may be dealt with by way of requirement to resign, reduction in rank or warning. Parts 2 and 3 of the Regulations make provision for interviewing constables where it is considered that their performance is unsatisfactory and identifying areas of the performance which require improvement. Part 4 makes provision for the holding of a hearing (called an inefficiency hearing) where it is considered that a constable's performance has not improved. If the chairman of the inefficiency hearing finds that the constable's performance has been unsatisfactory he may require the constable to resign, order reduction in his rank or issue a warning. Part 5 makes provision for an appeal to the chief constable.

Regulations 4 to 7 make provision with respect to the first stage in dealing with a constable whose performance is considered unsatisfactory. The constable may be required to attend a first interview with the reporting or countersigning officer. The purpose is to explain why his performance is considered unsatisfactory and to allow the constable to make representations. The interviewing officer may, if he considers it appropriate, warn the constable that his performance must improve within a specified period and require specific action to be taken. A formal record must be made.

Regulations 8 to 11 make provision with respect to a second interview where the constable's performance has not improved sufficiently. The interview is held by a senior officer and a personnel officer. Regulation 10 sets out the procedure. If, after considering any representations by the constable, it is considered that the constable's performance has continued to be unsatisfactory, similar steps may be taken as may be taken following the first interview.

Regulations 12 to 18 make provision with respect to inefficiency hearings. The constable shall be required to attend a hearing if the reporting officer and countersigning officer are of the opinion that there has been an insufficient improvement in his performance since the second interview.

Regulation 13 provides for the arranging of a hearing and regulation 14 specifies the procedure to be followed. A chairman requires to be appointed. He must be of at least the rank of superintendent or, where the constable required to attend the hearing holds the rank of superintendent, the rank of assistant chief constable.

The constable (who may be represented by an advocate or a solicitor or by another constable) must be given the opportunity of making representations. Regulation 15 enables the chairman to adjourn the hearing. This may be done where the constable fails to attend. The chairman may also adjourn the hearing for up to 3 months to allow a further period for assessment by the reporting officer and the countersigning officer of his performance. These officers require to prepare a report in such circumstances which will be considered by the chairman together with any further representations by the constable.

Regulation 16 requires the chairman to decide whether the constable's performance is satisfactory or not and to notify his decision. Where he finds that the performance has been unsatisfactory, the chairman may in terms of regulation 17 make a disposal. This may take the form of a requirement to resign, reduction in rank or a warning.

Regulation 18 makes provision for further assessment of the constable's performance if he was given a warning in terms of regulation 17(1)(c). It specifies further procedure in terms of which a report is required to be made after a specified period. Following consideration of any written comments by

the constable, the chairman must consider if there has been a sufficient improvement. If there has not, the chairman must require the constable to resign.

Regulations 19 to 21 make provision with respect to appeals to the chief constable following the decision of the chairman of the inefficiency hearing. An appeal may be made against the finding that the constable's performance has been unsatisfactory and any disposal, or against the disposal only. Where a constable is required to resign in terms of regulation 18(3)(c) following a period of assessment, he may appeal against that requirement. The chief constable may afford the appellant and the chairman of the inefficiency hearing the opportunity of making oral representations. The chief constable may also adjourn the appeal in order to obtain further information or where he wishes the chairman to hold a further hearing in relation to certain matters. Regulation 20(5) applies certain provisions of regulations 13 to 15 to such a hearing.

Regulation 21 requires the chief constable to determine the appeal in accordance with specified time limits. The chief constable may uphold or dismiss an appeal. Depending on the nature of the appeal he may either quash or vary the disposal. Regulation 22 makes minor and consequential amendments to the Police (Scotland) Regulations 1976 concerning the keeping of records made in disciplinary, conduct or inefficiency proceedings.