

POLICE AND FIRE REFORM (SCOTLAND) ACT 2012

EXPLANATORY NOTES

THE ACT – SECTION BY SECTION

Part 1 – Police Reform

Chapter 9 – Police Appeals Tribunals

63. This Chapter makes provision for the continuation of police appeals tribunals, describing their role in disciplinary cases where an officer has been dismissed or demoted in rank and the processes of review or appeal set out in regulations made using powers under [Section 48](#) have been exhausted. This Chapter largely replicates the provisions in the 1967 Act although they have been re-ordered and updated to provide appropriate independence.
64. [Section 56](#) gives a constable a right of appeal to a tribunal against dismissal or demotion in rank following the conclusion of misconduct or performance proceedings. [Schedule 3](#) makes further provision about these tribunals, including that the Scottish Ministers can make rules relating to appeals. It provides that the tribunal must consist of three members (one of whom is to act as the chairing member) qualified to practice law in Scotland for 5 years and selected by the Lord President of the Court of Session. The Lord President must establish and maintain a panel of persons from whom these members will be appointed. The SPA must meet all the expenses of the appeal including the tribunal members' remuneration, except the appellant's expenses; however the tribunal has the power to direct the SPA to meet these costs too. The Scottish Ministers can make further rules and provision about the appeals procedure including the appeal notices, the identity of the respondent and holding private hearings.
65. [Section 57](#) provides that a tribunal must, before determining the appeal, consider any written or oral representations made by either the person bringing the disciplinary action to bear (the respondent) or the constable who is appealing it (the appellant). Either party can require representations to be made by oral hearing, and either party can elect to be represented by another person. [Section 58](#) provides that the tribunal can either confirm the decision being appealed or replace it with any less severe decision that could have been made by the person who made the decision against which the appeal was made. Any decision overturning the original decision has effect from the date of the original decision. A substituted decision has effect for the purposes of pensionable service as though it was made at the time of the decision against which the appeal was made. The tribunal has the option of treating the substituted decision in the same way for the purposes of pay. The tribunal can deal with any other matters that it deems appropriate to the case including any relevant periods where the constable was suspended from duty.
66. Under [section 59](#), the chairing member of the tribunal has specific powers to require appropriate persons (including the appellant and the respondent) to provide information to aid it in its deliberations by attending and giving oral evidence at hearings or by providing relevant documents or information. It is an offence liable to a fine on

*These notes relate to the Police and Fire Reform (Scotland) Act
2012 (asp 8) which received Royal Assent on 7 August 2012*

summary conviction not exceeding level 2 on the standard scale to (without reasonable excuse): fail to attend hearings as required by citation; refuse or fail to answer any question at the hearing or to give the tribunal any document or information required. Knowingly or recklessly making a false statement in respect of any information required by the tribunal or deliberately altering, suppressing or destroying documents so required also constitutes an offence subject to the same maximum penalty. There is no defence of reasonable excuse in these circumstances. However, these powers do not require information to be disclosed which the person would be entitled to withhold in civil proceedings in the Court of Session.