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SCOTTISH STATUTORY INSTRUMENTS

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**2014 No. 67**

**The Police Service of Scotland (Performance) Regulations 2014**

**PART 1**

**General**

**Citation and commencement**

1. These Regulations may be cited as the Police Service of Scotland (Performance) Regulations 2014 and come into force on 1st April 2014.

**Interpretation**

2.—(1) In these Regulations—

“audio recording” means a recording made on any disc, tape or other device on which sounds are recorded so as to be capable of being reproduced;

“chairing constable” means the person appointed to act as chairing constable at a performance hearing or, as the case may be, further performance hearing;

“disposal” means any of the actions mentioned in regulation 40(1);

“extended final improvement notice” means a final improvement notice extended under regulation 40(1)(c);

“extended final improvement period” means the period specified by the chairing constable under regulation 40(4)(a)(i);

“final improvement notice” means a notice prepared under regulation 25(2)(a);

“final improvement period” has the meaning given by regulation 24(6)(c);

“first improvement notice” means a notice prepared under regulation 16(2)(a);

“first improvement period” has the meaning given by regulation 15(7)(c);

“first line manager” means the constable or the member of the police staff with immediate supervisory responsibility for the constable;

“further performance hearing” means a hearing arranged under regulation 42 to consider the constable’s performance following a performance hearing;

“human resources professional” means a member of the police staff who has responsibility for personnel matters relating to the Police Service;

“improvement notice” includes a first improvement notice, a final improvement notice and an extended final improvement notice;

“improvement period” means the period within which the constable’s performance is required to improve specified in an improvement notice and includes a first improvement period, a final improvement period and an extended final improvement period (see regulation 10);

“performance appeal meeting” means a meeting arranged under regulation 19 to consider an appeal by the constable against the finding and outcome of a performance meeting;

“performance hearing” means a hearing arranged under regulation 33 to consider the constable’s performance following a progress meeting;

“performance meeting” means a meeting arranged under regulation 14 to consider a constable’s performance;

“person determining the appeal” means the senior officer appointed by the deputy chief constable under regulation 45(2) to determine an appeal under regulation 44;

“police adviser” means a constable appointed to give advice on the proceedings to—

- (a) the first line manager at a performance meeting;
- (b) the second line manager at a performance appeal meeting or a progress meeting;
- (c) the senior manager at a progress appeal meeting; or
- (d) the chairing constable at a performance hearing or a further performance hearing;

“police representative” must be construed in accordance with regulation 6;

“progress appeal meeting” means a meeting arranged under regulation 28 to consider an appeal by the constable against the finding and outcome of a progress meeting;

“progress meeting” means a meeting arranged under regulation 23 to consider the constable’s performance following a performance meeting;

“second line manager” means—

- (a) in a case where the constable holds the rank of chief superintendent, an assistant chief constable, or a member of the police staff at least equivalent to the rank of assistant chief constable, designated for that purpose by the constable’s senior manager; or
- (b) in any other case, a constable or a member of the police staff who has immediate supervisory responsibility for the first line manager;

“senior manager” means a constable or a member of the police staff who (in either case) has supervisory responsibility for the second line manager;

“the Act” means the Police and Fire Reform (Scotland) Act 2012;

“the constable” means, unless the context otherwise requires, a constable to whom these Regulations apply and whose performance is being assessed in accordance with these Regulations;

“validity period” means the period for which an improvement notice is valid (see regulation 10);

“working day” means any day other than—

- (a) a Saturday or Sunday;
- (b) a day which is a bank holiday in Scotland within the meaning given by paragraph 2 of Schedule 1 to the Banking and Financial Dealings Act 1971(1); or
- (c) a day which is a public holiday in Scotland; and

“writing” includes electronic communications within the meaning given by section 15 of the Electronic Communications Act 2000(2) (and “written” is to be construed accordingly).

(2) In these Regulations, references to—

- (a) unsatisfactory performance; and
- (b) the performance of the constable being unsatisfactory,

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(1) 1971 c.80. Paragraph 2 of Schedule 1 has been amended by section 1 of the St Andrew’s Day Bank Holiday (Scotland) Act 2007 (asp 2).

(2) 2000 c.7. Section 15 has been amended by Schedule 17 to the Communications Act 2003 (c.21).

are references to an inability or failure of the constable to perform the duties of the constable's role or rank (or both) to a satisfactory standard.

### **Application**

**3.—**(1) These Regulations apply only in relation to the performance of constables below the rank of assistant chief constable who have completed their period of probation.

(2) These Regulations do not apply to—

- (a) constables on temporary service outwith the Police Service (either under arrangements made under section 15 of the Act or by virtue of paragraph 8(4) of schedule 5 to the Act);
- (b) persons engaged on temporary service as constables of the Police Service (either under arrangements made under section 16 of the Act or by virtue of paragraph 8(2) of schedule 5 to the Act); or
- (c) special constables appointed under section 9 of the Act.

### **Revocation and transitional provision**

**4.—**(1) Subject to paragraphs (2) and (3), the 2013 Regulations are revoked.

(2) The 2013 Regulations continue to have effect in relation to the performance of a constable if, before 1st April 2014, that constable has received a notice in pursuance of regulation 5 of those Regulations requiring the constable to attend a first interview.

(3) Paragraph (1) does not revoke regulations 23 and 24 of, or the Schedule to, the 2013 Regulations.

(4) In this regulation—

- “first interview” has the meaning given by regulation 2 of the 2013 Regulations; and
- “the 2013 Regulations” means the Police Service of Scotland (Performance) Regulations 2013(3).

### **Designation of deputy chief constable**

**5.—**(1) The chief constable must designate a deputy chief constable to exercise the functions of the deputy chief constable under these Regulations (and references in these Regulations to “the deputy chief constable” are, unless the context otherwise requires, references to that person).

(2) The deputy chief constable may direct or authorise a constable of at least the rank of sergeant to carry out any of the deputy chief constable's functions under these Regulations.

(3) A direction or authorisation under paragraph (2) does not affect the deputy chief constable's—

- (a) responsibility for the carrying out of delegated functions; or
- (b) ability to carry out delegated functions.

### **Police representative**

**6.—**(1) The constable may choose a person mentioned in paragraph (2) to act as the constable's police representative.

(2) The persons are—

- (a) in a case where the constable is a superintendent or a chief superintendent, another constable or a representative of any person representing the interests of superintendents (including chief superintendents); and

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(3) [S.S.I. 2013/61](#), relevantly amended by [S.S.I. 2013/125](#).

- (b) in any other case, another constable or a representative of the Police Federation for Scotland.
- (3) But the constable may not choose as a police representative any person who is otherwise involved in any aspect of the constable's performance being considered in accordance with these Regulations.
- (4) A police representative may—
  - (a) advise the constable throughout any proceedings under these Regulations;
  - (b) accompany the constable to any meeting or hearing which the constable is required to attend under these Regulations;
  - (c) make representations on the constable's behalf at any meeting or hearing under these Regulations (including asking questions of any witnesses where the constable would be entitled to do so); and
  - (d) make representations to the deputy chief constable concerning any aspect of the proceedings under these Regulations.
- (5) The chief constable must permit any constable acting as a police representative under these Regulations to use a reasonable amount of duty time for the purpose of performing the functions mentioned in paragraph (4).

#### **Procedure in constable's absence**

- 7.—(1) This regulation applies if the constable—
  - (a) does not attend a meeting or hearing under these Regulations; or
  - (b) participates in a performance hearing or further performance hearing by video link or other means under regulation 36(9).
- (2) If this regulation applies—
  - (a) the constable may be represented at the meeting or hearing by a police representative; and
  - (b) the fact that the constable is not represented by a police representative does not prevent the meeting or hearing being conducted and concluded in the constable's absence.

#### **Standard of proof**

- 8. A finding at any meeting or hearing under these Regulations as to whether the constable's performance has been unsatisfactory must be made on a balance of probabilities.

#### **Consideration of documents**

- 9. Despite the failure by any person to provide any document in accordance with these Regulations in advance of any meeting or hearing, the person conducting or chairing that meeting or hearing may allow that document to be considered at the meeting or hearing if it is considered appropriate to do so.

#### **Improvement periods and validity periods**

- 10.—(1) Every improvement notice given under these Regulations must specify—
  - (a) an improvement period; and
  - (b) a validity period.
- (2) An improvement period must be a period of not more than 12 months.
- (3) A validity period must—

- (a) commence on the same day as the improvement period specified in the improvement notice to which it relates;
- (b) end on or after the day on which that improvement period ends; and
- (c) subject to regulation 11(5), be a period of 12 months.

(4) If the constable makes a sufficient improvement in performance during the improvement period specified in any improvement notice, that improvement must be maintained until the end of the validity period of that notice (if longer than the improvement period).

#### **Extension of improvement and validity periods**

**11.**—(1) A first improvement period or a final improvement period may, on the application of the constable or otherwise, be extended by a constable above the rank of chief inspector and of a rank higher than the constable.

(2) An extended final improvement period may, on the application of the constable or otherwise, be extended by the deputy chief constable.

(3) But an extension made under paragraph (1) or (2) must not result in any improvement period exceeding 12 months.

(4) If an improvement period is extended, the validity period specified in the relevant improvement notice must also be extended, provided that the validity period must end not later than 6 months after the end of the improvement period as extended.

(5) An extension of a validity period under paragraph (4) may result in that validity period, as extended, exceeding 12 months.

(6) If any improvement period or validity period is extended, any reference in these Regulations to that improvement period or validity period must be read as a reference to that period as extended.

#### **Suspension of improvement and validity periods**

**12.**—(1) An improvement period or validity period must—

- (a) be suspended where the constable is absent from duty for a continuous period of 4 weeks or more; and
- (b) resume when the constable returns to duty.

(2) But paragraph (1) does not apply where the constable's absence is the subject of the proceedings under these Regulations.