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SCOTTISH STATUTORY INSTRUMENTS

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**2014 No. 67**

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

**PART 2**

**Performance Meetings**

**Circumstances in which a performance meeting may be required**

**13.** If the constable's first line manager considers that the performance of the constable is unsatisfactory, that line manager may refer the constable to a performance meeting.

**Arrangement of performance meeting**

**14.—(1)** A first line manager who refers a constable to a performance meeting must send a notice in writing requiring the constable to attend such a meeting.

(2) A notice under paragraph (1) must give details of—

- (a) the procedures for determining the date and time of the performance meeting;
- (b) the respect in which the constable's performance is considered to be unsatisfactory;
- (c) the possible outcomes of a performance meeting, progress meeting and performance hearing;
- (d) any proposed attendance at the meeting of a human resources professional or a police adviser to advise the first line manager on the proceedings;
- (e) any proposed attendance at the meeting of any other named person and the constable's right to refuse to consent to their attendance;
- (f) the constable's right to seek advice from a police representative;
- (g) the constable's right to be represented at the meeting by a police representative; and
- (h) the requirement to provide to the first line manager, in advance of the meeting, a copy of any document on which the constable intends to rely.

(3) A notice under paragraph (1) must be accompanied by a copy of any document relied upon by the first line manager in coming to the view that the performance of the constable is unsatisfactory.

(4) The first line manager must, if reasonably practicable, agree a date and time for the meeting with the constable.

(5) If no date and time are agreed under paragraph (4), the first line manager must specify a date and time for the meeting.

(6) If a date and time are specified under paragraph (5) and—

- (a) the constable or the constable's police representative will not be available at that date and time; and
- (b) the constable proposes an alternative date and time which satisfy paragraph (7),

the meeting must be postponed to the date and time proposed.

(7) An alternative date and time must—

- (a) be reasonable; and
- (b) fall not later than 10 working days from the date specified by the first line manager under paragraph (5).

(8) When the date and time of the meeting are determined in accordance with paragraphs (4) to (7), the first line manager must send a notice in writing to the constable specifying the date, time and place of that meeting.

### **Procedure at performance meeting**

**15.**—(1) The procedure at a performance meeting is as follows.

(2) The meeting must be conducted by the first line manager.

(3) A human resources professional or a police adviser may attend the meeting to advise the first line manager on the proceedings.

(4) Any other person whose proposed attendance was notified to the constable in accordance with regulation 14(2)(e) may attend the meeting provided the constable has not refused to consent to their attendance.

(5) The first line manager must—

- (a) explain how the constable’s performance is considered to be unsatisfactory;
- (b) provide the constable with an opportunity to respond; and
- (c) provide the constable’s police representative (if the constable has one) with an opportunity to make representations in accordance with regulation 6(4)(c) or (if applicable) 7.

(6) If, having considered any representations made in accordance with paragraph (5)(b) and (c) and any other representations made at the meeting (if any), the first line manager is satisfied that the constable’s performance is satisfactory, the first line manager must inform the constable that no further action is to be taken.

(7) If, having considered any representations made in accordance with paragraph (5)(b) and (c) and any other representations made at the meeting (if any), the first line manager is satisfied that the constable’s performance is unsatisfactory, the first line manager must inform the constable as to—

- (a) the respect in which the constable’s performance is considered unsatisfactory;
- (b) the improvement that is required in the constable’s performance;
- (c) the period within which that improvement is required to take place (to be known as “the first improvement period”);
- (d) the fact that the constable will receive a written improvement notice;
- (e) the validity period of that notice and the effect of regulation 10(4); and
- (f) the circumstances in which the constable may be required to attend a progress meeting.

(8) The first line manager may postpone or adjourn the performance meeting to a later time or date if satisfied that it is necessary or expedient to do so and the procedure mentioned in regulation 14(4) to (8) applies to a postponed or adjourned meeting as it applies to the meeting postponed or adjourned.

### **Procedure following performance meeting**

**16.**—(1) As soon as reasonably practicable after the date of the conclusion of the performance meeting the first line manager must prepare and send to the constable a written record of that meeting.

(2) If at a performance meeting the performance of the constable is found to be unsatisfactory, the first line manager must, as soon as reasonably practicable after the date of the conclusion of that meeting—

- (a) prepare and send to the constable a first improvement notice; and
- (b) give to the constable written notice of—
  - (i) the constable’s right to appeal under regulation 18;
  - (ii) the name of the person to whom an appeal notice must be sent;
  - (iii) the matters in relation to which an appeal may be made and the grounds of appeal;
  - (iv) the last date for lodging an appeal; and
  - (v) the constable’s right to submit comments on the written record of the meeting.

(3) Subject to paragraph (4), the constable may submit written comments on the written record of the meeting to the first line manager not later than 7 working days from the date on which the copy of that record is received by the constable.

(4) The first line manager may, at the constable’s request, extend the period mentioned in paragraph (3).

(5) The first line manager must ensure that the following are retained together and filed appropriately—

- (a) the first improvement notice;
- (b) the written record of the performance meeting; and
- (c) the constable’s written comments on that record.

### **First improvement notices**

17. A first improvement notice prepared under regulation 16(2)(a) must—

- (a) record—
  - (i) the respect in which the constable’s performance is considered to be unsatisfactory;
  - (ii) the improvement that is required in the constable’s performance; and
  - (iii) the length of the first improvement period;
- (b) specify a validity period;
- (c) inform the constable of the circumstances in which attendance at a progress meeting may be necessary; and
- (d) be signed and dated by the first line manager.

### **Appeal against the finding and outcome of a performance meeting**

18.—(1) If at a performance meeting the first line manager finds that the performance of the constable is unsatisfactory, the constable may appeal against—

- (a) that finding; and
- (b) any term of the first improvement notice specified in paragraph (3) (referred to in this regulation and regulation 21 as “the relevant terms”).

(2) An appeal under paragraph (1) may only be made on one or more of the grounds of appeal specified in paragraph (4).

(3) The relevant terms are—

- (a) the respect in which the constable’s performance is considered unsatisfactory;

- (b) the improvement that is required in performance; and
  - (c) the length of the first improvement period.
- (4) The grounds of appeal are—
- (a) that the finding of unsatisfactory performance is unreasonable;
  - (b) that any of the relevant terms are unreasonable;
  - (c) that there is evidence that could not reasonably have been considered at the performance meeting which could have affected materially—
    - (i) the finding of unsatisfactory performance; or
    - (ii) any of the relevant terms; and
  - (d) that there was a breach of the procedures set out in these Regulations or any other unfairness which could have affected materially—
    - (i) the finding of unsatisfactory performance; or
    - (ii) any of the relevant terms.
- (5) An appeal under paragraph (1) is to be commenced by the constable submitting a written appeal notice to the second line manager not later than 7 working days from the date of receipt of the first improvement notice.
- (6) A notice under paragraph (5) must—
- (a) set out the finding or the relevant terms (or both) against which the appeal is made;
  - (b) set out the grounds of appeal; and
  - (c) be accompanied by any evidence on which the constable intends to rely.
- (7) The second line manager may, at the constable's request, extend the period mentioned in paragraph (5) if satisfied that it is appropriate to do so.
- (8) The submission of an appeal notice under paragraph (5) does not affect the continuing operation of a first improvement notice sent under regulation 16(2)(a).

#### **Arrangement of performance appeal meeting**

- 19.**—(1) As soon as reasonably practicable after receipt of an appeal notice submitted under regulation 18(5), the second line manager must decide whether to—
- (a) require the constable to attend a performance appeal meeting; or
  - (b) determine the appeal without such a meeting.
- (2) The second line manager may determine the appeal without a performance appeal meeting only with the agreement of the constable.
- (3) If the second line manager decides to require the constable to attend a performance appeal meeting the second line manager must send to the constable a written notice giving details of—
- (a) the procedures for determining the date and time of that meeting;
  - (b) any proposed attendance at the meeting of a human resources professional or a police adviser to advise the second line manager on the proceedings;
  - (c) any proposed attendance at the meeting of the first line manager;
  - (d) any proposed attendance at the meeting of any other named person and the constable's right to refuse to consent to their attendance;
  - (e) the constable's right to seek advice from a police representative; and
  - (f) the constable's right to be represented at the meeting by a police representative.

(4) The second line manager must, if reasonably practicable, seek to agree a date and time for the meeting with the constable.

(5) If no date and time are agreed under paragraph (4), the second line manager must specify a date and time for the meeting.

(6) If a date and time are specified under paragraph (5) and—

(a) the constable or the constable's police representative will not be available at that date and time; and

(b) the constable proposes an alternative date and time which satisfy paragraph (7),

the meeting must be postponed to the date and time proposed.

(7) An alternative date and time must—

(a) be reasonable; and

(b) fall not later than 10 working days from the date specified by the second line manager under paragraph (5).

(8) When the date and time of a performance appeal meeting are determined in accordance with paragraphs (4) to (7), the second line manager must send a notice in writing to the constable specifying the date, time and place of that meeting.

### **Procedure at performance appeal meeting**

**20.**—(1) The procedure at a performance appeal meeting is as follows.

(2) The meeting must be conducted by the second line manager.

(3) The following persons may attend the meeting—

(a) a human resources professional or a police adviser to advise the second line manager on the proceedings;

(b) the first line manager; and

(c) any other person whose proposed attendance was notified to the constable in accordance with regulation 19(3)(d), provided the constable has not refused to consent to their attendance.

(4) The second line manager must—

(a) provide the constable with an opportunity to make representations; and

(b) provide the constable's police representative (if the constable has one) with an opportunity to make representations in accordance with regulation 6(4)(c) or (if applicable) 7.

(5) The second line manager may postpone or adjourn the performance appeal meeting to a later time or date if it appears necessary or expedient to do so and the procedure mentioned in regulation 19(4) to (8) applies to a postponed or adjourned meeting as it applies to the meeting postponed or adjourned.

### **Determination of appeal**

**21.**—(1) The second line manager must determine an appeal under regulation 18 in accordance with this regulation.

(2) In a case where a performance appeal meeting takes place, the second line manager must consider—

(a) the appeal notice submitted under regulation 18(5);

(b) any evidence accompanying that notice;

(c) the written record of the performance meeting;

- (d) the constable's written comments on that record (if any); and
- (e) any representations made at the performance appeal meeting.

(3) In a case where no performance appeal meeting takes place, the second line manager must consider—

- (a) the appeal notice submitted under regulation 18(5);
- (b) any evidence accompanying that notice;
- (c) the written record of the performance meeting; and
- (d) the constable's written comments on that record (if any).

(4) Having considered the things mentioned in paragraph (2) or, as the case may be, (3), the second line manager may—

- (a) confirm or reverse the finding of unsatisfactory performance; and
- (b) confirm or vary any of the relevant terms against which the appeal is made.

(5) A reversal of the finding of unsatisfactory performance revokes the first improvement notice.

(6) If the second line manager—

- (a) reverses the finding of unsatisfactory performance; or
- (b) varies any of the relevant terms of the first improvement notice against which the appeal is made,

the decision of the second line manager replaces, from the date of that decision, the finding, the first improvement notice or the relevant terms against which the appeal is made.

(7) As soon as reasonably practicable after determining an appeal under regulation 18, the second line manager must—

- (a) send to the constable a written note of the second line manager's decision; and
- (b) in a case where a performance appeal meeting has taken place, send to the constable a written record of that meeting.