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SCOTTISH STATUTORY INSTRUMENTS

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**2014 No. 67**

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

**PART 3**

**Progress meetings**

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

**22.**—(1) The first line manager of a constable who has received a first improvement notice must assess the constable's performance—

- (a) at the end of the first improvement period specified in that notice; and
- (b) during any part of the validity period specified in that notice which continues after the end of the first improvement period.

(2) The first line manager must inform the constable in writing as to whether, in the first line manager's opinion—

- (a) there has been a sufficient improvement in the constable's performance by the end of the first improvement period; and
- (b) that improvement has been maintained until the end of the validity period.

(3) If the first line manager is of the opinion that there has been a sufficient improvement in the constable's performance by the end of the first improvement period, the first line manager must remind the constable of the need to maintain that improvement until the end of the validity period.

(4) If the first line manager is of the opinion that—

- (a) the constable has failed to make the required improvement in performance by the end of the first improvement period; or
- (b) where the required improvement in performance has been made by the end of that period, that improvement has not been maintained until the end of the validity period,

the first line manager must refer the constable to a progress meeting to consider the constable's performance.

(5) A progress meeting may only consider unsatisfactory performance which is similar to or connected with the unsatisfactory performance referred to in the first improvement notice.

**Arrangement of progress meeting**

**23.**—(1) If the first line manager refers the constable to a progress meeting under regulation 22(4), the second line manager 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 progress meeting;
- (b) the respect in which the constable's performance is considered to be unsatisfactory;
- (c) the possible outcomes of a progress meeting and a performance hearing;

- (d) any proposed attendance at the meeting of a human resources professional or a police adviser to advise the second line manager on the proceedings;
  - (e) any proposed attendance at the meeting of the first line manager;
  - (f) any proposed attendance at the meeting of any other named person and the constable's right to refuse to consent to their attendance;
  - (g) the constable's right to seek advice from a police representative;
  - (h) the constable's right to be represented at the meeting by a police representative; and
  - (i) the requirement to provide to the second 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 in coming to the view that the performance of the constable is unsatisfactory.
- (4) The second line manager must, if reasonably practicable, seek to agree a date and time for the progress 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 progress 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 progress meeting**

- 24.**—(1) The procedure at a progress meeting is as follows.
- (2) The meeting must be conducted by the second line manager.
  - (3) The following persons may attend the meeting if requested to do so by the second line manager—
    - (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 23(2)(f), provided the constable has not refused to consent to their attendance.
  - (4) The second line manager must—
    - (a) explain how the constable's performance is considered to be unsatisfactory;
    - (b) provide the constable with an opportunity to make representations in response; 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.

(5) Paragraph (6) applies if, having considered any representations made in accordance with paragraph (4)(b) or (c) and any other representations made at the meeting (if any), the second line manager is satisfied that—

- (a) the constable has failed to make the required improvement in performance by the end of the first improvement period; or
- (b) in a case where the required improvement in performance has been made by the end of the first improvement period, that improvement has not been maintained until the end of the validity period.

(6) If this paragraph applies, the second line manager must inform the constable as to—

- (a) the respect in which the constable's performance is considered to be 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 final improvement period");
- (d) the fact that the constable will receive a written final 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 performance hearing.

(7) The second line manager may postpone or adjourn the meeting to a later time or date if satisfied that it is necessary or expedient to do so and the procedure mentioned in regulation 23(4) to (8) applies to a postponed or adjourned meeting as it applies to the meeting postponed or adjourned.

### **Procedure following progress meeting**

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

(2) Where at a progress meeting the performance of the constable is found to be unsatisfactory, the second 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 final improvement notice; and
- (b) give to the constable written notice of—
  - (i) the constable's right to appeal under regulation 27;
  - (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 second 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 second line manager may, at the constable's request, extend the period mentioned in paragraph (3).

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

- (a) the final improvement notice;
- (b) the written record of the progress meeting; and
- (c) the constable's written comments on that record.

### **Final improvement notices**

26. A final improvement notice prepared under regulation 25(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 final improvement period;
  - (b) specify a validity period;
  - (c) inform the constable as to the circumstances in which attendance at a performance hearing may be required; and
  - (d) be signed and dated by the second line manager.

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

27.—(1) Where at a progress meeting the second line manager finds that the performance of the constable is unsatisfactory, the constable may appeal against—

- (a) that finding;
- (b) any term of the final improvement notice specified in paragraph (3) (referred to in this regulation and regulation 30 as “the relevant terms”); and
- (c) the decision of the second line manager to require the constable to attend the progress meeting.

(2) An appeal under paragraph (1) may 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 final improvement period.

(4) The grounds of appeal are—

- (a) that, in relation to an appeal against the decision mentioned in paragraph (1)(c), the progress meeting did not consider only unsatisfactory performance which is similar to or connected with the unsatisfactory performance referred to in the first improvement notice;
- (b) that the finding of unsatisfactory performance is unreasonable;
- (c) that any of the relevant terms are unreasonable;
- (d) that there is evidence that could not reasonably have been considered at the progress meeting which could have affected materially—
  - (i) the finding of unsatisfactory performance; or
  - (ii) any of the relevant terms; and
- (e) 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 senior manager not later than 7 working days from the date of receipt of the final 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 senior 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 final improvement notice sent under regulation 25(2)(a).

### **Arrangement of progress appeal meeting**

**28.**—(1) As soon as reasonably practicable after receipt of an appeal notice submitted under regulation 27(5), the senior manager must decide whether to—

- (a) require the constable to attend a progress appeal meeting; or
- (b) determine the appeal without such a meeting.

(2) The senior manager may determine the appeal without a progress appeal meeting only with the agreement of the constable.

(3) If the senior manager decides to require the constable to attend a progress appeal meeting the senior 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 senior manager on the proceedings;
- (c) any proposed attendance at the meeting of the second 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 senior 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 senior 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 senior manager under paragraph (5).

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

### **Procedure at progress appeal meeting**

- 29.**—(1) The procedure at a progress appeal meeting is as follows.
- (2) The meeting must be conducted by the senior manager.
  - (3) The following persons may attend the meeting—
    - (a) a human resources professional or a police adviser to advise the senior manager on the proceedings;
    - (b) the second line manager; and
    - (c) any other person whose proposed attendance was notified to the constable in accordance with regulation 28(3)(d), provided the constable has not refused to consent to their attendance.
  - (4) The senior 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 senior manager may postpone or adjourn the progress appeal meeting to a later time or date if satisfied that it is necessary or expedient to do so and the procedure mentioned in regulation 28(4) to (8) applies to a postponed or adjourned meeting as it applies to the meeting postponed or adjourned.

### **Determination of appeal**

- 30.**—(1) The senior manager must determine an appeal under regulation 27 in accordance with this regulation.
- (2) In a case where a progress appeal meeting takes place, the senior manager must consider—
    - (a) the appeal notice submitted under regulation 27(5);
    - (b) any evidence accompanying that notice;
    - (c) the written record of the progress meeting;
    - (d) the constable’s written comments on that record (if any); and
    - (e) any representations made at the progress appeal meeting.
  - (3) In a case where no progress appeal meeting takes place, the senior manager must consider—
    - (a) the appeal notice submitted under regulation 27(5);
    - (b) any evidence accompanying that notice;
    - (c) the written record of the progress 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 senior 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 final improvement notice.
  - (6) Where the senior manager—
    - (a) reverses the finding of unsatisfactory performance; or
    - (b) varies any of the relevant terms against which an appeal was made,

the decision of the senior manager substitutes, from the date of the progress appeal meeting, the finding, the final improvement notice or the relevant terms against which an appeal was made.

(7) As soon as reasonably practicable after determining an appeal under regulation 27 the senior manager must—

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