
SCOTTISH STATUTORY INSTRUMENTS

2014 No. 67

The Police Service of Scotland (Performance) Regulations 2014

PART 4

Performance hearings

Circumstances in which a performance hearing may be required

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

- (a) at the end of the final 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 final 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 final 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 final 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 final 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 performance hearing to consider the constable's performance.

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

Appointment of chairing constable, etc.

32.—(1) The deputy chief constable must appoint a constable of at least the rank of superintendent and of a rank higher than the constable to act as chairing constable at the performance hearing.

(2) The deputy chief constable may in addition appoint—

- (a) a police adviser of at least the same rank as the constable; and
- (b) a human resources professional,

to advise the chairing constable at the performance hearing.

- (3) A person must not be appointed under this regulation if the deputy chief constable holds a reasonable concern as to whether that person could act impartially in relation to the constable.
- (4) The constable may object to the appointment of any person under this regulation.
- (5) An objection under paragraph (4) must be submitted in writing not later than 3 working days from receipt of the notice under regulation 33(1) and must indicate the constable's reasons for objecting.
- (6) The deputy chief constable must decide whether to uphold an objection and must—
- (a) notify the constable in writing of that decision; and
 - (b) if the objection is upheld—
 - (i) make a new appointment in accordance with this regulation; and
 - (ii) notify the constable in writing of the name of the person appointed.
- (7) The deputy chief constable must arrange for the provision to every person appointed under this regulation of—
- (a) any document which was available to the first line manager in relation to the performance meeting;
 - (b) any document which was available to the second line manager in relation to the progress meeting;
 - (c) the records of the performance meeting and the progress meeting;
 - (d) any submission made under regulation 34;
 - (e) documents relating to any appeal under these Regulations; and
 - (f) the first improvement notice and the final improvement notice.

Arrangement of the performance hearing

- 33.**—(1) If the first line manager refers the constable to a performance hearing the senior manager must send a notice in writing requiring the constable to attend such a hearing.
- (2) A notice under paragraph (1) must inform the constable as to—
- (a) the persons appointed under regulation 32(1) and (2);
 - (b) the procedures for determining the date and time of the performance hearing;
 - (c) the respect in which the constable's performance is considered unsatisfactory;
 - (d) the possible outcomes of a performance hearing;
 - (e) the effect of regulation 34;
 - (f) any proposed attendance at the hearing of the first line manager, the second line manager or the senior manager;
 - (g) any proposed attendance at the hearing of any other named person and the constable's right to refuse to consent to their attendance;
 - (h) the constable's right to seek advice from a police representative;
 - (i) the constable's right to be represented at the hearing by a police representative; and
 - (j) the requirement to provide to the chairing constable, in advance of the hearing, a copy of any document on which the constable intends to rely.
- (3) A notice under paragraph (1) must be accompanied by—
- (a) a copy of any document relied upon in coming to the view that the performance of the constable is unsatisfactory; and
 - (b) a copy of the documents mentioned in regulation 32(7).

Procedure on receipt of notice of performance hearing

34.—(1) The constable must, not later than 20 working days from receipt, respond in writing to a notice under regulation 33(1) indicating either—

- (a) that the constable accepts the first line manager’s opinion under regulation 31(4); or
- (b) that the constable does not accept that opinion.

(2) A constable who accepts the first line manager’s opinion may make a written submission to the deputy chief constable.

(3) A constable who does not accept that opinion must provide a written submission explaining the reasons for not accepting that opinion.

(4) A submission under this regulation must be accompanied by any document on which the constable intends to rely at the performance hearing.

Witnesses

35.—(1) The first line manager and the constable must, no later than 10 working days after receipt by the first line manager of the constable’s response under regulation 34, supply to each other—

- (a) the name and address of any witness on whom they propose to rely at the performance hearing and a summary of the evidence each witness will give; or
- (b) notice that they do not intend to rely on any witnesses.

(2) The first line manager and the constable must then seek to agree a joint list of witnesses and provide that list to the chairing constable.

(3) If it is not possible for the first line manager and the constable to agree on a joint list of witnesses, they must each supply to the chairing constable a list of proposed witnesses.

(4) As soon as reasonably practicable after receiving lists of witnesses under paragraphs (2) or (3), the chairing constable must—

- (a) decide which, if any, of the listed witnesses should attend the performance hearing; and
- (b) notify the first line manager and the constable of that decision.

(5) The chairing constable may determine that witnesses not included in any list under this regulation (whether joint or otherwise) are to attend the performance hearing.

(6) The chairing constable must not decide, in pursuance of paragraphs (4) or (5), that any witness is to give evidence at the performance hearing unless the chairing constable reasonably considers that it is necessary for the witness to do so.

(7) The chairing constable must notify in writing any witness who is to attend the performance hearing.

Timing of performance hearing

36.—(1) The performance hearing must take place not later than 35 working days after a notice has been sent under regulation 33(1).

(2) But the chairing constable may extend the time period mentioned in paragraph (1) if it would be in the interests of fairness to do so.

(3) If the time period is extended under paragraph (2), the chairing constable must provide written notification to both the deputy chief constable and the constable of the reasons for that extension.

(4) The chairing constable must, if reasonably practicable, agree a time and date for the performance hearing with the constable.

(5) If no date and time are agreed under paragraph (4), the chairing constable must specify a time and date for that hearing.

(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 hearing must be postponed to the date and time proposed by the constable.

(7) An alternative date and time must—

(a) be reasonable;

(b) fall not later than 10 working days from the date specified by the chairing constable under paragraph (4); and

(c) fall not later than—

(i) 35 working days from the date of a notice given under regulation 33(1); or

(ii) the end of any extended period specified under paragraph (2).

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

(9) The chairing constable may allow a constable or a constable's police representative (or both) who is unable, on reasonable grounds, to attend the performance hearing to participate in that hearing by video link or any other reasonable means.

Postponement and adjournment of performance hearing

37.—(1) The chairing constable may, if satisfied that it is necessary or expedient in the circumstances—

(a) postpone to a specified date a performance hearing which has not commenced; or

(b) adjourn to a specified date a performance hearing which has commenced.

(2) A date specified under paragraph (1) may fall after the end of the period of 35 working days mentioned in regulation 36(1).

(3) If a hearing is postponed or adjourned under paragraph (1) the chairing constable must notify in writing the constable, any person appointed under regulation 32(2) and the deputy chief constable of—

(a) the revised date, time and place of the hearing; and

(b) the reasons for the postponement or adjournment.

Procedure at performance hearing

38.—(1) The procedure at a performance hearing is as follows.

(2) The hearing must be conducted by the chairing constable.

(3) The following persons may attend the hearing if requested to do so by the chairing constable—

(a) the first line manager;

(b) the second line manager;

(c) the senior manager;

(d) any person whose attendance was notified to the constable in accordance with regulation 33(2)(g), provided the constable has not refused to consent to their attendance.

- (4) The chairing constable must—
 - (a) explain to the constable how the constable’s performance is considered to be unsatisfactory; and
 - (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) The chairing constable may permit the constable to ask questions of any witness.
- (6) An audio recording of the hearing must be made and the constable must, on request, be supplied with a copy of that recording.

Finding

- 39.**—(1) Following the performance hearing the chairing constable must decide whether—
 - (a) the constable has failed to make the required improvement in performance by the end of the final improvement period; or
 - (b) in a case where the required improvement in performance has been made by the end of that period, that improvement has been maintained until the end of the validity period.
- (2) Not later than 3 working days from the conclusion of the performance hearing the chairing constable must give both the constable and the first line manager written notice of—
 - (a) the chairing constable’s decision;
 - (b) the reasons for that decision; and
 - (c) any disposal ordered under regulation 40.
- (3) If regulation 44(1) applies, the notice given under paragraph (2) must notify the constable of the right to appeal under that regulation and of the procedure for making such an appeal.

Disposal

- 40.**—(1) If the chairing constable decides under regulation 39(1) that the constable’s performance is unsatisfactory the chairing constable may, subject to paragraph (3) and (4), order—
 - (a) dismissal of the constable with notice;
 - (b) demotion in rank; or
 - (c) extension of the final improvement notice.
- (2) If dismissal of the constable with notice is ordered, the period of notice must be determined by the chairing constable, but must be not less than 28 days.
- (3) Extension of the final improvement notice may be ordered only where the chairing constable is satisfied that there are exceptional circumstances which justify such a disposal.
- (4) If extension of the final improvement notice is ordered—
 - (a) the chairing constable must amend the final improvement notice—
 - (i) to state that if the constable does not make a sufficient improvement in performance within such reasonable period as the chairing constable specifies (being a period of no more than 6 months from the date of extension) the constable may be required to attend a further performance hearing; and
 - (ii) to specify a new validity period; and
 - (b) the chairing constable may amend the terms of the final improvement notice which relate to—

- (i) the respect in which the constable's performance is considered to be unsatisfactory;
or
- (ii) the improvement that is required in the constable's performance.

Assessment of performance following performance hearing

41.—(1) If the final improvement notice is extended under regulation 40(1)(c), the first line manager must assess the constable's performance—

- (a) at the end of the extended final 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 extended final 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 extended final 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 extended final 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, following an assessment under paragraph (1), 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 extended final 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 further performance hearing to consider the constable's performance.

(5) A further performance hearing may consider only unsatisfactory performance which is similar to or connected with the unsatisfactory performance referred to in the final improvement notice extended under regulation 40(1)(c).

(6) Subject to paragraph (7)—

- (a) a further performance hearing must be conducted by the charring constable who conducted the performance hearing; and
- (b) the charring constable must be advised at the further performance hearing by any person appointed under regulation 32(2) to advise at the performance hearing.

(7) If any person mentioned in paragraph (6) is unable to attend a further performance hearing the deputy chief constable may appoint a replacement in accordance with regulation 32(1) and (2) (and paragraphs (3) to (6) of that regulation apply in relation to such an appointment).

(8) The deputy chief constable must arrange for the provision to every person mentioned in paragraph (6) (or any replacement for such a person appointed under paragraph (7)) of—

- (a) any document which was available to the first line manager in relation to the performance meeting;
- (b) any document which was available to the second line manager in relation to the progress meeting;
- (c) any document which was available to the charring constable in relation to the performance hearing;

- (d) the records of the performance meeting, the progress meeting and the performance hearing;
- (e) any submission made under regulation 34;
- (f) documents relating to any appeal under these Regulations; and
- (g) the first improvement notice, final improvement notice and extended final improvement notice.

Arrangement of further performance hearing

42.—(1) If the first line manager refers a constable to a further performance hearing, the senior manager must send a notice in writing requiring the constable to attend such a hearing.

(2) A notice under paragraph (1) must inform the constable as to—

- (a) the identity of the charring constable and any person appointed to advise that constable;
- (b) the procedures for determining the date and time of the further performance hearing;
- (c) the respect in which the constable’s performance is considered to be unsatisfactory;
- (d) the possible outcomes of a further performance hearing;
- (e) the effect of regulation 34 (as modified by regulation 43);
- (f) any proposed attendance at the hearing of the first line manager, the second line manager or the senior manager;
- (g) any proposed attendance at the hearing of any other named person and the constable’s right to refuse to consent to their attendance;
- (h) the constable’s right to seek advice from a police representative;
- (i) the constable’s right to be represented at the hearing by a police representative; and
- (j) the requirement to provide to the charring constable, in advance of the hearing, 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 constable’s performance is unsatisfactory.

Application of Regulations to further performance hearing

43. Regulations 34 and 36 to 40 apply in relation to a further performance hearing as they apply in relation to a performance hearing, subject to the following modifications—

- (a) regulation 34 applies as if—
 - (i) in the opening words of paragraph (1), for “33(1)” there were substituted “42(1)”; and
 - (ii) in sub-paragraph (a) of that paragraph, for “31(4)” there were substituted “41(4)”;
- (b) regulation 36 applies as if for “33(1)”, where it appears in paragraphs (1) and (7)(c)(i), there were substituted “42(1)”;
- (c) regulation 38(3)(d) applies as if for “33(2)(g)” there were substituted “42(2)(g)”;
- (d) regulation 39(1)(a) applies as if for “final improvement period”, there were substituted “extended final improvement period”; and
- (e) regulation 40 applies as if—
 - (i) paragraphs (1)(c), (3) and (4) were omitted; and
 - (ii) in paragraph (1) the words “, subject to paragraphs (3) and (4),” were omitted.