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SCOTTISH STATUTORY INSTRUMENTS

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**2014 No. 67**

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

**PART 5**

**Appeal against finding at performance hearing**

**Appeal against finding at performance hearing**

**44.**—(1) If at a performance hearing or a further performance hearing, the charring constable finds that the constable's performance is unsatisfactory and orders dismissal or demotion in rank, the constable may appeal against—

- (a) the finding of unsatisfactory performance; and
- (b) the disposal ordered.

(2) An appeal under paragraph (1) may be made only on one or more of the grounds of appeal specified in paragraph (3).

(3) The grounds of appeal are—

- (a) that the finding of unsatisfactory performance is unreasonable;
- (b) that the disposal ordered is unreasonable;
- (c) that there is evidence that could not reasonably have been considered at the performance hearing or further performance hearing (as the case may be) which could have affected materially—
  - (i) the finding of unsatisfactory performance; or
  - (ii) the disposal ordered; 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) the disposal ordered.

(4) An appeal under paragraph (1) is to be commenced by the constable submitting a written appeal notice to the deputy chief constable not later than 30 working days from the date on which the constable receives the notice under regulation 39(2) of the decision in relation to which the appeal is made.

(5) A notice under paragraph (4) must—

- (a) set out the finding or the disposal (or both) against which the appeal is made;
- (b) set out the grounds of appeal;
- (c) specify whether the constable requests an appeal hearing; and
- (d) be accompanied by any evidence on which the constable intends to rely.

(6) The chief constable may, on the application of the constable, extend the period mentioned in paragraph (4) if satisfied that it is appropriate to do so.

### **Procedure for determining appeal**

- 45.**—(1) An appeal under regulation 44 must be determined in accordance with this regulation.
- (2) The appeal must be determined by a senior officer who is—
- (a) appointed by the deputy chief constable;
  - (b) in a case where the appellant is a chief superintendent, a deputy chief constable other than the deputy chief constable designated by virtue of regulation 5.
- (3) If the constable requests an appeal hearing, the person determining the appeal must decide whether to—
- (a) hold an appeal hearing; or
  - (b) determine the appeal without holding such a hearing.
- (4) If the constable does not request an appeal hearing or the person determining the appeal decides not to hold such a hearing, the appeal must be determined on the basis of—
- (a) the appeal notice and any evidence sent with that notice; and
  - (b) the audio recording of the performance hearing or further performance hearing to which the appeal relates.
- (5) If the person determining the appeal decides to hold an appeal hearing, the following paragraphs of this regulation apply.
- (6) The person determining the appeal must within 30 working days of receipt of an appeal notice sent under regulation 44(4) send a notice in writing—
- (a) requiring the constable to attend an appeal hearing; and
  - (b) specifying a date and time for that hearing.
- (7) The appeal hearing is to be heard not more than 10 working days from the date on which the decision to hold that hearing was made.
- (8) The appeal hearing is to be conducted in such manner as the person determining the appeal decides, provided that—
- (a) the constable’s police representative must be permitted to attend; and
  - (b) the constable and the constable’s police representative must be permitted to make oral representations.

### **Outcome of appeal**

- 46.**—(1) The person determining the appeal may, whether after an appeal hearing or otherwise—
- (a) confirm or reverse the finding of unsatisfactory performance;
  - (b) confirm the disposal ordered; or
  - (c) order a disposal which is less severe than that ordered by the chairing constable of the performance hearing or further performance hearing (as the case may be).
- (2) But in the case of an appeal against a decision or disposal ordered at a further performance hearing, the person determining the appeal may not order a further extension of the final improvement notice.
- (3) The person determining the appeal must notify the constable in writing of the decision under paragraph (1) and the reasons for that decision.
- (4) A notice under paragraph (3) must be given as soon as reasonably practicable and no later than 90 working days from the date the appeal notice was submitted.

(5) A demotion in rank ordered under paragraph (1)(c) has effect from the date of the notice given under paragraph (3).

(6) Where the person determining the appeal orders under paragraph (1)(c) an extension of the final improvement notice regulation 40(3) and (4) apply to that extension, except that references to the “chairing constable” are to be read as references to the person determining the appeal.

(7) Where the person determining the appeal confirms that—

(a) the constable’s performance is unsatisfactory; and

(b) the constable is to be dismissed or demoted in rank,

the notice given under paragraph (3) must be accompanied by a notice in writing setting out the circumstances in which the constable may appeal to a police appeals tribunal and the procedure for making such an appeal.