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SCOTTISH STATUTORY INSTRUMENTS

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**2016 No. 51**

**The Police Service of Scotland (Senior Officers) (Performance) Regulations 2016**

**PART 2**

**Performance Meetings**

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

**11.**—(1) If the senior officer's reporting officer considers that the performance of the senior officer is unsatisfactory, that reporting officer may refer the senior officer to a performance meeting.

(2) If the senior officer's reporting officer is a constable, the chief constable must notify the Authority of a referral under paragraph (1).

**Arrangement of performance meeting**

**12.**—(1) A reporting officer who refers a senior officer to a performance meeting must send a notice in writing requiring the senior officer to attend such a meeting.

(2) A notice sent 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 senior officer'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 reporting officer on the proceedings;
- (e) any proposed attendance at the meeting of any other named person and the senior officer's right to refuse to consent to their attendance;
- (f) the senior officer's right to seek advice from a police representative;
- (g) the senior officer's right to be represented at the meeting by a police representative; and
- (h) the requirement to provide to the reporting officer, in advance of the meeting, a copy of any documents on which the senior officer intends to rely.

(3) A notice sent under paragraph (1) must be accompanied by a copy of any document relied upon by the reporting officer in coming to the view that the performance of the senior officer is unsatisfactory.

(4) The reporting officer must, if reasonably practicable, seek to agree a date and time for the meeting with the senior officer.

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

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

- (a) the senior officer or the senior officer's police representative will not be available at that date and time; and
- (b) the senior officer proposes an alternative date and time which satisfy the requirements of 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 reporting officer under paragraph (5).

(8) When the date and time of the meeting have been determined in accordance with paragraphs (4) to (7), the reporting officer must send a notice in writing to the senior officer specifying the date, time and place of that meeting.

### **Procedure at performance meeting**

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

(2) The meeting must be conducted by the reporting officer.

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

(4) Any other person whose proposed attendance was notified to the senior officer in accordance with regulation 12(2)(e) may attend the meeting provided the senior officer has not refused to consent to their attendance.

(5) The reporting officer must—

- (a) explain how the senior officer's performance is considered to be unsatisfactory;
- (b) provide the senior officer with an opportunity to respond; and
- (c) provide the senior officer's police representative (if the officer has one) with an opportunity to make representations in accordance with regulation 4(3)(c).

(6) If, having considered any representations made by virtue of paragraph (5)(b) and (c) and any other representations made at the meeting (if any), the reporting officer is satisfied that the senior officer's performance is satisfactory, the reporting officer must inform the senior officer that no further action is to be taken.

(7) If, having considered any representations made by virtue of paragraph (5)(b) and (c) and any other representations made at the meeting (if any), the reporting officer is satisfied that the senior officer's performance is unsatisfactory, the reporting officer must inform the senior officer as to—

- (a) the respect in which the senior officer's performance is considered unsatisfactory;
- (b) the improvement that is required in the senior officer'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 senior officer will receive a written improvement notice;
- (e) the validity period of that notice and the effect of regulation 8(4); and
- (f) the circumstances in which the senior officer may be required to attend a progress meeting.

(8) The reporting officer may postpone or adjourn the performance meeting to a specified later time or date if satisfied that it is necessary or expedient to do so and the procedure mentioned in regulation 12(4) to (8) applies to a postponed meeting or the continuation of an adjourned meeting.

### **Procedure following performance meeting**

14.—(1) As soon as reasonably practicable after the date of the conclusion of the performance meeting the reporting officer must prepare and send to the senior officer a written record of that meeting.

(2) If at a performance meeting the performance of the senior officer is found to be unsatisfactory, the reporting officer must, as soon as reasonably practicable after the date of the conclusion of that meeting—

- (a) prepare and send to the senior officer a first improvement notice; and
- (b) give to the senior officer written notice of—
  - (i) the senior officer’s right to appeal under regulation 16;
  - (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 senior officer’s right to submit comments on the written record of the meeting.

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

(4) The reporting officer may, at the senior officer’s request, extend the period mentioned in paragraph (3).

(5) The reporting officer 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 senior officer’s written comments on that record (if any).

### **First improvement notice**

15. A first improvement notice prepared under regulation 14(2)(a) must—

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

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

16.—(1) If at a performance meeting the reporting officer finds that the performance of the senior officer is unsatisfactory, the senior officer 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 senior officer'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—

- (a) if the senior officer is an assistant chief constable, sending a written appeal notice to the chief constable; and
- (b) in any other case, sending such a notice to the Authority.

(6) A notice sent under paragraph (5) must—

- (a) be sent not later than 7 working days from the date of receipt of the first improvement notice;
- (b) set out the finding or the relevant terms (or both) against which the appeal is made;
- (c) set out the grounds of appeal; and
- (d) be accompanied by any evidence on which the senior officer intends to rely.

(7) The person to whom an appeal notice is to be sent may, on the application of the senior officer, extend the period mentioned in paragraph (6) if satisfied that it is appropriate to do so.

(8) The submission of an appeal notice under paragraph (6) does not affect the continuing operation of a first improvement notice sent under regulation 14(2)(a).

#### **Arrangement of performance appeal meeting: assistant chief constables**

17.—(1) This regulation applies if an assistant chief constable sends an appeal notice under regulation 16(5).

(2) As soon as reasonably practicable after receipt of such a notice the chief constable must—

- (a) notify the Authority that such a notice has been received; and
- (b) require the senior officer to attend a performance appeal meeting; or
- (c) determine the appeal without such a meeting.

(3) The chief constable may determine the appeal without a performance appeal meeting only with the agreement of the senior officer.

(4) If the chief constable determines the appeal in accordance with paragraph (3), the chief constable must notify the Authority of that determination.

(5) If the senior officer is required to attend a performance appeal meeting the chief constable must send to the senior officer 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 chief constable on the proceedings;
- (c) any proposed attendance at the meeting of the reporting officer;
- (d) any proposed attendance at the meeting of any other named person and the senior officer's right to refuse to consent to their attendance;
- (e) the senior officer's right to seek advice from a police representative; and
- (f) the senior officer's right to be represented at the meeting by a police representative.

(6) The chief constable must, if reasonably practicable, seek to agree a date and time for the meeting with the senior officer.

(7) If no date and time are agreed under paragraph (6), the chief constable must specify a date and time for the meeting.

(8) If a date and time are specified under paragraph (7) and—

- (a) the chief constable or the senior officer's police representative will not be available at that date and time; and
- (b) the chief constable proposes an alternative date and time which satisfy the requirements of paragraph (9),

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

(9) An alternative date and time must—

- (a) be reasonable; and
- (b) fall not later than 10 working days from the date specified by the chief constable under paragraph (7).

(10) When the date and time of a performance appeal meeting are determined in accordance with paragraphs (6) to (9), the chief constable must send a notice in writing to the senior officer specifying the date, time and place of that meeting.

(11) The chief constable must, prior to the meeting taking place, notify the Authority of the date, place and time of that meeting.

### **Procedure at performance appeal meeting: assistant chief constables**

**18.—**(1) The procedure at a performance appeal meeting arranged under regulation 17 is as follows.

(2) The meeting must be conducted by the chief constable.

(3) The following people may attend the meeting:—

- (a) a human resources professional or a police adviser to advise the chief constable on the proceedings;
- (b) the reporting officer; and
- (c) any other person whose proposed attendance was notified to the senior officer in accordance with regulation 17(5)(d), provided the senior officer has not refused to consent to their attendance.

(4) The chief constable must—

- (a) provide the senior officer with an opportunity to make representations; and
  - (b) provide the senior officer's police representative (if the senior officer has one) with an opportunity to make representations in accordance with regulation 4(3)(c).
- (5) The chief constable may postpone or adjourn the performance appeal meeting to a specified later time or date if it appears necessary or expedient to do so and the procedure mentioned in regulation 17(6) to (11) applies to a postponed meeting or the continuation of an adjourned meeting.

#### **Arrangement of performance appeal meeting: deputy chief constables and chief constable**

19.—(1) This regulation applies where a deputy chief constable or the chief constable submits an appeal notice under regulation 16(5).

(2) The Authority must appoint a panel (to be known as an “appeal panel”) to conduct the appeal meeting.

(3) If the appeal notice is submitted by a deputy chief constable, a panel appointed under paragraph (2) must comprise—

- (a) a chairing member who is a member of the Authority; and
- (b) one other person—
  - (i) whom the Authority considers appropriate based on that person's skills, knowledge and expertise; and
  - (ii) who is not an excluded person.

(4) In the event that the votes of a panel constituted in accordance with paragraph (3) are evenly split on any decision, the chairing member's decision will constitute the decision of the panel.

(5) If the appeal notice is submitted by the chief constable, a panel appointed under paragraph (2) must comprise—

- (a) a chairing member who is a member of the Authority, other than the chairing member of the Authority appointed under paragraph 2(1)(a) of schedule 1 to the Act;
- (b) one member who is a member of the staff of the Scottish Administration; and
- (c) one member—
  - (i) whom the Authority considers appropriate based on that person's skills, knowledge and expertise; and
  - (ii) who is not an excluded person.

(6) As soon as reasonably practicable after receipt of an appeal notice submitted under regulation 16(5) the appeal panel must decide whether to—

- (a) require the senior officer to attend a performance appeal meeting; or
- (b) determine the appeal without such a meeting.

(7) The appeal panel may determine the appeal without a performance appeal meeting only with the agreement of the senior officer.

(8) If the senior officer is required to attend a performance appeal meeting the appeal panel must send to the senior officer 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 police adviser to advise the appeal panel on the proceedings;
- (c) any proposed attendance at the meeting of the reporting officer;
- (d) any proposed attendance at the meeting of any other named person and the senior officer's right to refuse to consent to their attendance;

- (e) the senior officer's right to seek advice from a police representative; and
- (f) the senior officer's right to be represented at the meeting by a police representative.

(9) The appeal panel must, if reasonably practicable, seek to agree a date and time for the meeting with the senior officer.

(10) If no date and time are agreed under paragraph (9), the appeal panel must specify a date and time for the meeting.

(11) If a date and time are specified under paragraph (10) and—

- (a) the senior officer or the senior officer's police representative will not be available at that date and time; and
- (b) the senior officer proposes an alternative date and time which satisfy the requirements of paragraph (12),

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

(12) An alternative date and time must—

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

(13) When the date and time of a performance appeal meeting are determined in accordance with paragraphs (9) to (12), the appeal panel must send a notice in writing to the senior officer specifying the date, time and place of that meeting.

### **Procedure at performance appeal meeting: deputy chief constables and chief constable**

**20.**—(1) The procedure at a performance appeal meeting arranged under regulation 19 is as follows.

(2) The following people may attend the meeting—

- (a) a human resources professional or a police adviser to advise the appeal panel on the proceedings;
- (b) the reporting officer; and
- (c) any other person whose proposed attendance was notified to the senior officer in accordance with regulation 19(8)(d), provided the senior officer has not refused to consent to their attendance.

(3) The appeal panel must—

- (a) provide the senior officer with an opportunity to make representations; and
- (b) provide the senior officer's police representative (if the senior officer has one) with an opportunity to make representations in accordance with regulation 4(3)(c).

(4) The appeal panel may postpone or adjourn the performance appeal meeting to a specified later time or date if it appears necessary or expedient to do so and the procedure mentioned in regulation 19(9) to (13) applies to a postponed meeting or the continuation of an adjourned meeting.

### **Determination of appeal**

**21.**—(1) An appeal under regulation 16 must be determined in accordance with this regulation.

(2) In a case where a performance appeal meeting takes place, the person or appeal panel determining the appeal must consider—

- (a) the appeal notice sent under regulation 16(5);
- (b) any evidence accompanying that notice;

- (c) the written record of the performance meeting;
  - (d) the senior officer'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 person or appeal panel determining the appeal must consider—
- (a) the appeal notice sent under regulation 16(5);
  - (b) any evidence accompanying that notice;
  - (c) the written record of the performance meeting; and
  - (d) the senior officer'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 person or appeal panel determining the appeal 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 person or appeal panel determining the appeal—
- (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 that person or panel 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 16, the person or appeal panel determining that appeal must—
- (a) send to the senior officer a written notice of that person's or that panel's decision;
  - (b) in a case where a performance appeal meeting has taken place, send to the senior officer a written record of that meeting; and
  - (c) in the case of a performance appeal meeting which relates to an assistant chief constable, notify the Authority of the outcome of that meeting.