
SCOTTISH STATUTORY INSTRUMENTS

2016 No. 51

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

PART 4

Performance hearings

Circumstances in which a performance hearing may be required

27.—(1) The reporting officer for a senior officer who has received a final improvement notice must assess the senior officer'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 reporting officer must inform the senior officer in writing as to whether—

- (a) there has been a sufficient improvement in the senior officer'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 reporting officer is of the opinion that there has been a sufficient improvement in the senior officer's performance by the end of the final improvement period, the reporting officer must remind the senior officer of the need to maintain that improvement until the end of the validity period.

(4) If the reporting officer is of the opinion that—

- (a) the senior officer 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 reporting officer must refer the senior officer to a performance hearing to consider the senior officer's performance.

(5) A performance hearing may consider only—

- (a) the unsatisfactory performance referred to in the first improvement notice and the final improvement notice; and
- (b) unsatisfactory performance which is similar to or connected with the unsatisfactory performance referred to in those notices.

Appointment of panel

28.—(1) This regulation applies where the reporting officer refers the senior officer to a performance hearing under regulation 27(4).

(2) The Authority must appoint a panel to conduct the performance hearing.

- (3) If the senior officer is an assistant chief constable, the Authority must appoint to the panel—
 - (a) a chairing member who is a member of the Authority;
 - (b) the chief constable; and
 - (c) one other member—
 - (i) whom the Authority considers appropriate based on that individual's skills, knowledge and expertise; and
 - (ii) who is not an excluded person.
- (4) If the senior officer is a deputy chief constable, the Authority must appoint to the panel—
 - (a) a member of the Authority;
 - (b) one member—
 - (i) whom the Authority considers appropriate based on that person's experience of police work, whether in Scotland or elsewhere in the UK; and
 - (ii) who is not an excluded person; 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.
- (5) The Authority must designate one of the panel members appointed under paragraph (4) as a chairing member.
- (6) If the senior officer is the chief constable, the Authority must appoint to the panel 3 individuals—
 - (a) whom the Authority considers appropriate based on those individuals' skills, knowledge and expertise; and
 - (b) who are not excluded persons.
- (7) The Authority must designate one of the panel members appointed under paragraph (6) as a chairing member.
- (8) The Authority may appoint up to two individuals to act as assessors to assist the panel.
- (9) The Authority must arrange for the provision to every person appointed under this regulation of—
 - (a) any document which was available to the reporting officer in relation to the performance meeting;
 - (b) any document which was available to the person or panel conducting any performance appeal meeting;
 - (c) any document which was available to the reporting officer in relation to the progress meeting;
 - (d) the records of the performance meeting, any performance appeal meeting and the progress meeting;
 - (e) any submission made under regulation 30; and
 - (f) the improvement notice and the final improvement notice.

Arrangement of the performance hearing

29.—(1) If the reporting officer refers the senior officer to a performance hearing under regulation 27(4) the Authority must send a notice in writing requiring the senior officer to attend such a hearing.

- (2) A notice sent under paragraph (1) must inform the senior officer as to—
 - (a) the membership of the panel;
 - (b) the procedures for determining the date and time of the performance hearing;
 - (c) the respect in which the senior officer’s performance is considered to be unsatisfactory;
 - (d) the possible outcomes of a performance hearing;
 - (e) the effect of regulation 30;
 - (f) any proposed attendance at the hearing of the reporting officer;
 - (g) any proposed attendance at the hearing of any other named person and the senior officer’s right to refuse to consent to their attendance;
 - (h) the senior officer’s right to seek advice from a police representative;
 - (i) the senior officer’s right to be represented at the hearing by a police representative;
 - (j) the requirement to provide to the chairing member of the panel, in advance of the hearing, a copy of any document on which the senior officer intends to rely.
- (3) A notice sent 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 senior officer is unsatisfactory; and
 - (b) a copy of the documents mentioned in regulation 28(9).

Procedure on receipt of notice of performance hearing

30.—(1) The senior officer must, not later than 20 working days from receipt, respond in writing to a notice under regulation 29(1) indicating either—

- (a) that the senior officer accepts the reporting officer’s opinion mentioned in regulation 27(4);
or
- (b) that the senior officer does not accept that opinion.

(2) A senior officer who accepts the reporting officer’s opinion may make a written submission to the Authority.

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

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

(5) The Authority must notify the senior officer of its receipt of a submission under this regulation.

Witnesses

31.—(1) The reporting officer and the senior officer must, no later than 10 working days from the date of the notification under regulation 30(5), supply to each other—

- (a) the names and addresses of any witnesses 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 reporting officer and the senior officer must then seek to agree a joint list of witnesses and provide that list to the chairing member of the panel.

(3) If it is not possible for the reporting officer and the senior officer to agree a joint list of witnesses, they must each supply to the chairing member of the panel a list of proposed witnesses.

(4) As soon as reasonably practicable after receiving a list or lists of witnesses under paragraph (2) or (3) (as the case may be), the chairing member of the panel must—

- (a) decide which, if any, of the listed witnesses are to attend the performance hearing; and
- (b) notify the reporting officer and the senior officer of that decision.

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

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

Timing of performance hearing

32.—(1) The performance hearing must take place not later than 35 working days after a notice has been sent under regulation 29(1).

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

(3) If the time period is extended under paragraph (2), the chairing member of the panel must provide written notification to both the Authority and the senior officer of the reasons for that extension.

(4) The chairing member of the panel must, if reasonably practicable, seek to agree a time and date for the performance hearing with the senior officer.

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

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

(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 member of the panel under paragraph (5); and
- (c) fall not later than—
 - (i) 35 working days from the date of a notice given under regulation 29(1); or
 - (ii) the end of any extended period specified under paragraph (2).

(8) If the date and time of the performance hearing have been determined in accordance with paragraphs (4) to (7), the chairing member of the panel must send a notice in writing to the senior officer specifying the date, time and place of that hearing.

(9) The chairing member of the panel may allow a senior officer or a senior officer'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

33.—(1) The chairing member of the panel 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 32(1).

(3) Where a hearing is postponed or adjourned under paragraph (1) the chairing member of the panel must notify in writing the senior officer, the other members of the panel and the Authority of—

- (a) the revised date, time and place of the hearing; and
- (b) the reasons for the postponement or adjournment.

Procedure at performance hearing

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

(2) The following individuals may attend the hearing if requested to do so by the chairing member of the panel:—

- (a) the reporting officer;
- (b) any person whose attendance was notified to the senior officer in accordance with regulation 29(2)(g), provided the senior officer has not refused to consent to their attendance.

(3) The chairing member of the panel must—

- (a) explain to the senior officer how the senior officer's performance is considered to be unsatisfactory;
- (b) provide the senior officer with an opportunity to make representations in response; and
- (c) 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 chairing member of the panel may permit the senior officer to ask questions of any witness.

(5) An audio recording of the hearing must be made and the senior officer must, on request, be supplied with a copy of that recording.

Finding

35.—(1) Following the performance hearing the panel must decide whether—

- (a) the senior officer 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 member of the panel must give both the senior officer and the Authority written notice of—

- (a) the panel's decision;

- (b) the reasons for that decision; and
- (c) any disposal ordered under regulation 36.

(3) The Authority must deliver the notice given under paragraph (2) to the senior officer as soon as is practicable.

(4) Where a disposal mentioned in regulation 36(1)(a) or (b) is ordered, the notice given under paragraph (2) must notify the senior officer of the right to appeal to a police appeals tribunal and the procedure for making such an appeal.

Disposal

36.—(1) If the panel decides under regulation 35(1) that the senior officer's performance is unsatisfactory it must, subject to paragraphs (3) and (4), determine that the Authority is to—

- (a) dismiss the senior officer with notice;
- (b) demote the senior officer in rank; or
- (c) extend the final improvement notice.

(2) In a case where it is determined that the Authority is to dismiss the senior officer with notice, the period of notice must be determined by the Authority, but must be not less than 28 days.

(3) The final improvement notice may be extended only where the panel is satisfied that there are exceptional circumstances which justify such action.

(4) If it is determined that the final improvement notice is to be extended—

- (a) that notice must be amended—
 - (i) to state that if the senior officer does not make a sufficient improvement in performance within such reasonable period as the panel specifies (being a period of no more than 6 months from the date of extension) the senior officer may be required to attend a further performance hearing; and
 - (ii) to specify a new validity period; and
- (b) the terms of the final improvement notice may be amended which relate to—
 - (i) the respect in which the senior officer's performance is considered to be unsatisfactory; or
 - (ii) the improvement that is required in the senior officer's performance.

Assessment of performance following performance hearing

37.—(1) If the final improvement notice is extended by virtue of regulation 36(1)(c), the reporting officer must assess the senior officer's performance—

- (a) at the end of 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 reporting officer must inform the senior officer in writing as to whether, in the reporting officer's opinion—

- (a) there has been a sufficient improvement in the senior officer'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 reporting officer is of the opinion that there has been a sufficient improvement in the senior officer's performance during the extended final improvement period, the reporting officer

must remind the senior officer of the need to maintain that improvement until the end of the validity period.

- (4) If, following an assessment under paragraph (1), the reporting officer is of the opinion that—
- (a) the senior officer 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 reporting officer must refer the senior officer to a further performance hearing to consider the senior officer's performance.

- (5) A further performance hearing may consider only—
- (a) the unsatisfactory performance referred to in the first improvement notice, the final improvement notice and the extended final improvement notice; and
 - (b) unsatisfactory performance which is similar to or connected with the unsatisfactory performance referred to in those notices.

(6) Subject to paragraph (8), a further performance hearing must be conducted by the panel which conducted the performance hearing.

(7) If any member of the panel mentioned in paragraph (6) is unable to attend a further performance hearing the Authority may appoint a replacement in accordance with regulation 28.

(8) The Authority must arrange for the provision to every member of the panel mentioned in paragraph (6) or any replacement appointed under paragraph (7) of—

- (a) any document which was available to the reporting officer in relation to the performance meeting;
- (b) any document which was available to the person or panel conducting any performance appeal meeting;
- (c) any document which was available to the reporting officer in relation to the progress meeting;
- (d) any document which was available to the panel in relation to the performance hearing;
- (e) the records of the performance meeting, any performance appeal meeting, the progress meeting and the performance hearing;
- (f) any submission made under regulation 30; and
- (g) the first improvement notice, final improvement notice and extended final improvement notice.

Arrangement of further performance hearing

38.—(1) If the reporting officer refers a senior officer to a further performance hearing, the Authority must send a notice in writing requiring the senior officer to attend such a hearing.

- (2) A notice under paragraph (1) must inform the senior officer as to—
- (a) the membership of the panel;
 - (b) the procedures for determining the date and time of the further performance hearing;
 - (c) the respect in which the senior officer's performance is considered to be unsatisfactory;
 - (d) the possible outcomes of a further performance hearing;
 - (e) the effect of regulation 30 (as modified by regulation 39);
 - (f) any proposed attendance at the hearing of the reporting officer;

- (g) any proposed attendance at the hearing of any other named person and the senior officer's right to refuse to consent to their attendance;
 - (h) the senior officer's right to seek advice from a police representative;
 - (i) the senior officer's right to be represented at the hearing by a police representative; and
 - (j) the requirement to provide to the chairing member of the panel, in advance of the hearing, a copy of any document on which the senior officer 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 senior officer's performance is unsatisfactory.

Application of Regulations to further performance hearing

39. Regulations 30 and 32 to 36 apply in relation to a further performance hearing as they apply in relation to a performance hearing, subject to the following modifications:—

- (a) regulation 30(1) applies as if—
 - (i) for “29(1)” there were substituted “38(1)”; and
 - (ii) for “27(4)” there were substituted “37(4)”;
- (b) regulation 32 applies as if for “29(1)”, where it appears in paragraphs (1) and (7)(c)(i), there were substituted “38(1)”;
- (c) regulation 34(2)(b) applies as if for “29(2)(g)” there were substituted “38(2)(g)”;
- (d) regulation 35(1)(a) applies as if for “final improvement period”, there were substituted “extended final improvement period”; and
- (e) regulation 36 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.