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STATUTORY INSTRUMENTS

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**2020 No. 3**

**POLICE, ENGLAND AND WALES**

**The Police (Performance) Regulations 2020**

<i>Made</i>	- - - -	<i>6th January 2020</i>
<i>Laid before Parliament</i>		<i>10th January 2020</i>
<i>Coming into force</i>	- -	<i>1st February 2020</i>

The Secretary of State makes the following Regulations, in exercise of the powers conferred by sections 50(1), (2)(e), (3), (4) and (7), 51(1), (2)(ba), (2A), (3A) and (4), 84(1), (2), (3) and (6) and 88F(5) of the Police Act 1996(1) and section 36(1)(a) and (b) of the Police Reform Act 2002(2).

In accordance with section 63(3)(a) of the Police Act 1996(3), the Secretary of State has supplied a draft of these Regulations to the Police Advisory Board for England and Wales and has taken into consideration the representations made by that Board before making these Regulations.

**PART 1**

**Preliminary**

**Citation and commencement**

**1.** These Regulations may be cited as the Police (Performance) Regulations 2020 and come into force on 1st February 2020.

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- (1) 1996 c. 16. Subsection (3) of section 50 was substituted by paragraphs 1 and 3 of Schedule 22 to the Criminal Justice and Immigration Act 2008 (c. 4) (“the 2008 Act”). Subsection (2)(ba) of section 51 was inserted by section 35 of the 2002 Act and amended by paragraph 4 of Schedule 22 to the 2008 Act. Subsection (2A) of section 51 was inserted by paragraph 4 of Schedule 22 to the 2008 Act. Section 84 was substituted by paragraph 7 of Schedule 22 to the 2008 Act and amended by paragraph 40 of Schedule 16 to the Police Reform and Social Responsibility Act 2011 (c. 13) (“the 2011 Act”) and paragraph 65(3) of Schedule 9 to the Policing and Crime Act 2017 (c. 3) (“the 2017 Act”). There are other amendments of sections 50, 51 and 84 but none is relevant. See section 84(4) for the meaning of “prescribed” and other terms used in section 84(1) or (2). Section 88F was inserted by Schedule 8 to the 2017 Act.
- (2) 2002 c. 30. Section 36(1)(a) was amended by paragraphs 15 and 53 of Schedule 9 to the 2017 Act.
- (3) Section 63(3)(a) was substituted by paragraph 6(2) of Schedule 22 to the 2008 Act. There are further amendments of section 63 but none is relevant.

## Application

2.—(1) Subject to paragraph (2), these Regulations apply where unsatisfactory performance or attendance by a police officer comes to the attention of the line manager of the officer, or a chief officer of police, on or after 1st February 2020.

(2) These Regulations do not apply in relation to—

- (a) a member of a police force above the rank of chief superintendent;
- (b) an officer of the rank of constable who has not completed the period of probation applicable to the officer.

## Revocations and transitional provisions

3.—(1) Subject to paragraph (2), the following Regulations are revoked—

- (a) the Police (Performance) Regulations 2012(4);
- (b) the Police (Performance) (Amendment) Regulations 2014(5).

(2) The Regulations mentioned in paragraph (1) and regulation 7(11)(a) of the Police Barred List and Police Advisory List Regulations 2017(6) as in force immediately before these Regulations come into force continue to have effect in relation to—

- (a) unsatisfactory performance or attendance or gross incompetence which came to the attention of the line manager of an officer or a chief officer of police before 1st February 2020;
- (b) unsatisfactory performance or attendance or gross incompetence which came to the attention of the line manager of an officer or a chief officer of police on or after 1st February 2020 but which relates to a matter being handled under the Regulations mentioned in paragraph (1).

## Interpretation and delegation

4.—(1) In these Regulations—

- “the 1996 Act” means the Police Act 1996;
- “the 2002 Act” means the Police Reform Act 2002;
- “the Conduct Regulations” means the Police (Conduct) Regulations 2020(7);
- “appropriate authority” means the chief officer of police of the police force concerned;
- “complainant” is to be construed in accordance with section 29(2) of the 2002 Act (interpretation of Part 2)(8);
- “complaint” has the meaning given to it by section 12 of the 2002 Act (complaints, matters and persons to which Part 2 applies)(9);
- “conduct matter” has the meaning given to it by section 12 of the 2002 Act(10);
- “Director General” means the Director General of the Independent Office for Police Conduct, established under section 9 of the 2002 Act (the Independent Office for Police Conduct)(11);

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(4) S.I. 2012/2631.

(5) S.I. 2014/2403.

(6) S.I. 2017/1135.

(7) S.I. 2020/4.

(8) Section 29(2) was amended by paragraph 6 of Schedule 4 to the 2017 Act.

(9) Section 12(1) to (1B) was substituted for section 12(1) by section 14(2) of the 2017 Act.

(10) Section 12(2) was amended by sections 2(3)(a) and 3(3) of the Police (Complaints and Conduct) Act 2012 (c. 22) and paragraph 8(6)(a) of Schedule 14 to the Police Reform and Social Responsibility Act 2011 (c. 13) (“the 2011 Act”).

(11) Section 9 of the 2002 Act established a body corporate known as the Independent Police Complaints Commission (IPCC). Section 9 was amended by section 33(2) and (4) of the 2017 Act to provide that the body corporate known as the IPCC

- “DSI matter” has the meaning given to it by section 12 of the 2002 Act(12).
- “document” means anything in which information of any description is recorded;
- “first stage appeal meeting” has the meaning given to it by regulation 19(8);
- “first stage meeting” has the meaning given to it by regulation 15;
- “gross incompetence” means a serious inability or serious failure of a police officer to perform the duties of the officer’s rank or the role the officer is currently undertaking to a satisfactory standard or level, without taking into account the officer’s attendance, to the extent that dismissal would be justified and “grossly incompetent” is to be construed accordingly;
- “human resources professional” means a police officer or police staff member who has specific responsibility for personnel matters relating to members of a police force;
- “interested person” means a person who has an interest in being kept properly informed about the handling of a complaint, conduct matter or DSI matter in accordance with section 21 of the 2002 Act (duty to provide information for other persons)(13);
- “investigator”, other than in regulation 14, means a person appointed or designated under paragraph 16, 18 or 19 of Schedule 3 to the 2002 Act (investigations)(14), as the case may be;
- “line manager” means the police officer or the police staff member who, in either case, has immediate supervisory responsibility for the officer concerned;
- “officer concerned” means the police officer in respect of whom proceedings under these Regulations are, or are proposed to be, taken;
- “panel” means a panel appointed by the appropriate authority in accordance with regulation 34 subject to any change to the membership of that panel in accordance with regulation 35 and to regulations 48 and 49;
- “police barred list” means the list referred to in section 88B(2) of the 1996 Act (duty to maintain police barred list)(15);
- “police force concerned” means—
- (a) the police force of which the officer concerned is a member, or
  - (b) where the officer concerned is a special constable, the police force maintained for the police area for which the officer is appointed as a special constable;
- “police friend” means a person chosen by the officer concerned in accordance with regulation 5;
- “police officer” means a member of a police force or a special constable;
- “police staff member” means—
- (a) a member of the civilian staff of a police force, within the meaning of section 102(4) and (6) of the Police Reform and Social Responsibility Act 2011 (interpretation of Part 1)(16), or

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would continue to exist and would be known instead as the Independent Office for Police Conduct (IOPC). There are other amendments of section 9 but none is relevant.

- (12) Section 12(2A) to (2D) was inserted by paragraph 3 of Schedule 12 to the Serious Organised Crime and Police Act 2005 (c. 15) (“the 2005 Act”).
- (13) Section 21 was amended by paragraphs 1 and 7 of Schedule 12 to the 2005 Act, section 15 of the 2017 Act and paragraphs 1 and 4 of Schedule 4 to, paragraph 47(d) of Schedule 5 to, and paragraphs 15 and 27 of Schedule 9 to that Act.
- (14) Paragraph 16 was amended by paragraphs 11 and 14 of Schedule 12 to the 2005 Act, paragraphs 1, 11 and 12 of Schedule 14 to the 2011 Act, paragraphs 8 and 17 of Schedule 6 to the Crime and Courts Act 2013 (c. 22) and paragraphs 9 and 16 of Schedule 5 to the 2017 Act; paragraph 18 was amended by paragraphs 1, 11 and 16 of Schedule 12 to the 2005 Act and by paragraphs 9, 15, 18 and 19 of Schedule 5 to the 2017 Act; paragraph 19 was amended by paragraphs 1, 11 and 17 of Schedule 12 to the 2005 Act and paragraphs 9, 15, 20 and 56 of Schedule 9 to the 2017 Act. There are other amendments of paragraphs 16, 18 and 19 but none is relevant.
- (15) Section 88B was inserted by Schedule 8 to the 2017 Act.

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(16) 2011 c. 13.

(b) an employee of the Common Council of the City of London who is under the direction and control of a chief officer;

“proposed witness” means a witness whose attendance at a third stage meeting the officer concerned or the appropriate authority (as the case may be) wishes to request of the panel chair;

“relevant lawyer” has the same meaning as in section 84(4) of the 1996 Act (representation at disciplinary and other proceedings)(17);

“relevant terms of the final written improvement notice” has the meaning given to it by regulation 27;

“relevant terms of the written improvement notice” has the meaning given to it by regulation 19;

“second line manager” means the person appointed by the appropriate authority to act as the second line manager for the purposes of these Regulations in relation to the officer concerned and who is either—

(a) a member of the police force concerned having supervisory responsibility for the line manager and who (in a case where the line manager is a member of the force) is senior in rank to the line manager, or

(b) a police staff member who has supervisory responsibility for the line manager;

“second stage appeal meeting” has the meaning given to it by regulation 27(8);

“second stage meeting” has the meaning given to it by regulation 22(2) or 24(5)(e), as the context requires;

“senior manager” means—

(a) the police officer or police staff member who is the supervisor of the person who is, in relation to the officer concerned, the second line manager, or

(b) in the absence of such supervisor, the police officer or police staff member nominated by the appropriate authority to carry out any of the functions of such supervisor under these Regulations, being of at least the same or equivalent rank or grade as the person who is, in relation to the officer concerned, the second line manager;

“staff association” means—

(a) in relation to a member of a police force of the rank of chief inspector or below, the Police Federation of England and Wales, and

(b) in relation to a member of a police force of the rank of superintendent or chief superintendent, the Police Superintendents’ Association;

“third stage meeting” has the meaning given to it by regulation 30(2) or 32(3), as the context requires;

“working day” means any day other than—

(c) a Saturday or Sunday;

(d) Christmas Day or Good Friday, or

(e) a day which is a bank holiday under the Banking and Financial Dealings Act 1971(18) in England and Wales.

(2) In these Regulations—

(a) a reference to—

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(17) Section 84 was substituted by paragraphs 1 and 7 of Schedule 22 to the 2008 Act and amended by paragraphs 1 and 40 of Schedule 16 to the 2011 Act and section 29(1) and (4) of the 2017 Act.

(18) 1971 c. 80.

- (i) unsatisfactory performance or attendance; or
  - (ii) the performance or attendance of an officer being unsatisfactory,
- is a reference to an inability or failure of a police officer to perform the duties of the role or rank the officer is currently undertaking to a satisfactory standard or level;
- (b) “unsatisfactory performance or attendance” may be construed as a reference to unsatisfactory performance and attendance;
  - (c) “performance or attendance” may be construed as a reference to performance and attendance.
- (3) Information in documents which are stated to be subject to the harm test under these Regulations must not be given to the officer concerned in so far as the appropriate authority considers that preventing disclosure to the officer is—
- (a) necessary for the purpose of preventing the premature or inappropriate disclosure of information that is relevant to, or may be used in, criminal proceedings;
  - (b) necessary in the interests of national security;
  - (c) necessary for the purposes of the prevention or detection of crime, or the apprehension or prosecution of offenders;
  - (d) necessary for the purpose of the prevention or detection of misconduct by police officers or police staff members or their apprehension for such matters;
  - (e) justified on the grounds that providing the information would involve disproportionate effort in comparison to the seriousness of the unsatisfactory performance or attendance in question;
  - (f) necessary and proportionate for the protection of the welfare and safety of any informant or witness, or
  - (g) otherwise in the public interest.
- (4) The appropriate authority may, subject to paragraph (5), delegate any of its functions under these Regulations to—
- (a) a member of a police force of at least the rank of inspector, or
  - (b) a police staff member who, in the opinion of the appropriate authority, is of at least a similar level of seniority to an inspector.
- (5) Where the appropriate authority delegates its functions under regulation 32, a decision under sub-paragraph (a) or (c) of regulation 32(1) must be authorised by a member of a police force holding a rank above that of chief superintendent.
- (6) Any proceedings under these Regulations are disciplinary proceedings for the purposes of—
- (a) section 87(5) of the 1996 Act (guidance concerning disciplinary proceedings)**(19)**, and
  - (b) section 36(2) of the 2002 Act (conduct of disciplinary proceedings).
- (7) Any proceedings under these Regulations are disciplinary proceedings—
- (a) for the purposes of paragraph (a) of the definition of “disciplinary proceedings” in section 29(1) of the 2002 Act (interpretation), but only for the purposes of the following provisions of that Act—
    - (i) section 22(8) (guidance issued by the Director General);
    - (ii) the following provisions of Schedule 3 to the 2002 Act (handling of complaints and conduct matters etc.)—

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(19) Section 87(1A) to (5) was substituted for section 87(2) by paragraph 18 of Schedule 7 to the 2002 Act and amended by paragraph 9(3) of Schedule 22 to the 2008 Act.

- (aa) paragraph 2(6B) (complaints which must be handled in accordance with Schedule 3)(**20**);
- (bb) paragraph 6(2E) (handling of complaints other than by way of investigation: admissibility of statements in proceedings)(**21**);
- (cc) paragraph 6A(10) (reviews relating to complaints dealt with other than by investigation: references to outcome of a complaint)(**22**);
- (dd) paragraph 19ZG(2) (retention of items by the Director General)(**23**);
- (ee) paragraph 19ZH(6) (restrictions on access to items retained by the Director General)(**24**);
- (ff) paragraph 20(1) (restrictions on proceedings pending the conclusion of an investigation)(**25**);
- (gg) paragraph 22(10) (purposes for which appropriate authority may request items from investigator)(**26**);
- (hh) paragraph 23(5A) (duties of Director General on receipt or completion of report on investigation)(**27**);
- (ii) paragraph 24(6B) (duties of appropriate authority on receipt of report on investigation)(**28**);
- (jj) paragraph 25(4C), (4E) and (14) (reviews with respect to an investigation: powers of relevant review body and references to outcome of a complaint)(**29**);
- (kk) paragraph 27(2) (duties of appropriate authority following memorandum under paragraph 24C)(**30**).

## PART 2

### General

#### Police friend

- 5.—(1) The officer concerned may choose—
- (a) a police officer;
  - (b) a police staff member, or
  - (c) where the officer concerned is a member of a police force, a person nominated by the officer's staff association,

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(20) Paragraph 2(6B) was inserted by paragraphs 1 and 2 of Schedule 5 to the 2017 Act.

(21) Paragraph 6(2E) was inserted by paragraphs 5 and 9 of Schedule 5 to the 2017 Act.

(22) Paragraph 6A(10) was inserted by paragraphs 29 and 31 of Schedule 5 to the 2017 Act.

(23) Paragraph 19ZG was inserted by section 20(1) of the 2017 Act. Sub-paragraph (2) was amended by paragraphs 15 and 56 of Schedule 9 to that Act.

(24) Paragraph 19ZH was inserted by section 20(1) of the 2017 Act. Sub-paragraph (6) was amended by paragraphs 15 and 56 of Schedule 9 to that Act.

(25) Paragraph 20(1) was inserted by paragraphs 1 and 2 of Schedule 11, and paragraphs 1, 11 and 18 of Schedule 12, to the 2005 Act and paragraph 47 of Schedule 5, and paragraphs 15 and 56 of Schedule 9, to the 2017 Act.

(26) Paragraph 22(10) was inserted by paragraphs 1, 3 and 12 of Schedule 23 to the 2008 Act.

(27) Paragraph 23(5A) was inserted by paragraphs 9 and 26 of Schedule 5 to the 2017 Act and amended by paragraphs 15 and 56 of Schedule 9 to that Act.

(28) Paragraph 24(6B) was inserted by section 15(1) and (10)(a) of the 2017 Act.

(29) Paragraph 25(4C), (4E) and (14) was inserted by paragraphs 29 and 34 of Schedule 5 to the 2017 Act. Sub-paragraphs (4C) and (4E) were amended by paragraphs 15 and 56 of Schedule 9 to that Act.

(30) Paragraph 27(2) was amended by section 15(1) and (10)(b) of the 2017 Act.

who is not otherwise involved in the matter, to act as a police friend.

(2) The police friend may—

- (a) advise the officer concerned throughout the proceedings under these Regulations;
- (b) represent the officer at any meeting under these Regulations, unless the officer has the right to be legally represented under regulation 6 and chooses to be so represented;
- (c) make representations to the appropriate authority concerning any aspect of the proceedings under these Regulations, and
- (d) accompany the officer to any meeting which the officer is required to attend under these Regulations.

(3) Where the police friend is a police officer or a police staff member, the chief officer of police of the force of which the police friend is a member must permit the police friend to use a reasonable amount of duty time for the purposes referred to in paragraph (2).

(4) The reference in paragraph (3) to the force of which the police friend is a member includes a reference to the force maintained for the police area for which a special constable is appointed and the force in which a police staff member is serving.

### **Legal and other representation**

**6.**—(1) Where the officer concerned is required to attend a third stage meeting under regulation 32, the officer has the right to be legally represented at the meeting by a relevant lawyer of the officer's choice.

(2) If the officer chooses not to be legally represented—

- (a) the meeting may take place and the officer may be dismissed or be subject to any other outcome ordered under regulation 46(2) or (6) without being legally represented, and
- (b) the panel conducting the meeting may nevertheless be advised by a relevant lawyer at the meeting in accordance with regulation 42(3).

(3) Except in a case where the officer concerned has the right to be legally represented and chooses to be so represented, the officer may be represented at a meeting under these Regulations only by a police friend.

(4) A third stage meeting under regulation 32 must not take place unless the officer concerned has been notified in writing of the effect of this regulation.

### **Provision of notices or documents**

**7.** Where any written notice or document is to be given to the officer concerned under these Regulations, it must be—

- (a) given to the officer in person;
- (b) left with a person at, or sent by recorded delivery to, the officer's last known address;
- (c) given to the officer in person by the officer's police friend where the police friend has agreed with the appropriate authority to deliver the notice or document, or
- (d) given to the officer in any other manner agreed between the person who is required to give the notice or document and the officer.

### **Procedure at meetings under these Regulations**

**8.**—(1) Where the officer concerned participates in a third stage meeting by video link or other means under regulation 38(9) or otherwise does not attend a meeting under these Regulations, the officer may nevertheless be represented at that meeting by—

- (a) a police friend, or
  - (b) where the officer was required to attend the third stage meeting under regulation 32, the officer's relevant lawyer.
- (2) Where the officer concerned does not participate in a third stage meeting by video link or other means under regulation 38(9) or otherwise does not attend a meeting under these Regulations, the meeting may be proceeded with and concluded in the absence of the officer whether or not the officer is so represented.
- (3) During any meeting under these Regulations, the person representing the officer concerned may—
- (a) address the meeting in order to do any or all of the following—
    - (i) put the case of the officer;
    - (ii) sum up that case;
    - (iii) respond on behalf of the officer to any view expressed at the meeting;
    - (iv) make representations concerning any aspect of proceedings under these Regulations, and
    - (v) in the case of a third stage meeting only, subject to paragraph (7), ask questions of any witnesses;
  - (b) confer with the officer.
- (4) Where the person representing the officer concerned is a relevant lawyer, the police friend may also confer with the officer.
- (5) Where the officer concerned is participating in a third stage meeting by video link or other means in accordance with regulation 38(9), the person representing the officer or (if different) the police friend (or both) may also participate in the third stage meeting by such means together with the officer.
- (6) The police friend or relevant lawyer of the officer concerned may not answer any questions asked of the officer during a meeting.
- (7) The panel chair must determine whether any question should be put to a witness at a third stage meeting.
- (8) At any meeting under these Regulations, the person or panel conducting the meeting may not make a finding of unsatisfactory performance or attendance or gross incompetence unless—
- (a) satisfied on the balance of probabilities that there has been unsatisfactory performance or attendance or gross incompetence, or
  - (b) the officer concerned admits unsatisfactory performance or attendance or gross incompetence.
- (9) The person conducting or chairing a meeting under these Regulations may allow any document to be considered at that meeting notwithstanding that a copy of it has not been—
- (a) given to the person by the officer concerned in accordance with regulation 16(9), 19(6)(b), 23(8), 27(6)(b) or 36(3);
  - (b) given to the officer concerned in accordance with regulation 16(2) or (3), 23(2), 31(2) or 33(2), or
  - (c) made available to each panel member or given to the officer concerned under regulation 34(9).

### **Nominated persons**

**9.**—(1) A senior manager may appoint another person (a “nominated person”) to carry out any of the functions of the line manager or the second line manager in these Regulations.

(2) A person appointed to carry out any of the functions of the line manager under paragraph (1) may not also be appointed under that paragraph to carry out any of the functions of the second line manager.

(3) A person appointed to carry out any of the functions of the second line manager under paragraph (1) may not also be appointed under that paragraph to carry out any of the functions of the line manager.

(4) A nominated person must be a member of the police force concerned or a police staff member in the police force concerned and must be, in the opinion of the appropriate authority, of at least the same or equivalent rank or grade as the person whose functions the nominated person is carrying out.

(5) Where a nominated person is appointed, references in these Regulations to a line manager or a second line manager, as the case may be, must be construed as references to the nominated person, in relation to the functions which the nominated person has been appointed to carry out.

### **Reference to certain periods**

**10.**—(1) The appropriate authority may, on the application of the officer concerned or otherwise, extend the period specified in accordance with any of the regulations mentioned in paragraph (2) if it is satisfied that it is appropriate to do so.

(2) The regulations are—

- (a) regulation 17(6)(c);
- (b) regulation 25(6)(c), and
- (c) regulation 46(7)(c) and (8)(a).

(3) Unless the appropriate authority is satisfied that there are exceptional circumstances making it appropriate, any such period may not be extended if the extension would result in the total length of that period exceeding 12 months.

(4) Where an extension is granted under paragraph (1) of a period specified under a regulation mentioned in paragraph (2), any reference in these Regulations to such period is to be construed as a reference to that period as so extended.

### **Suspension of certain periods**

**11.**—(1) Any reference in these Regulations to a period mentioned in paragraph (2) does not include any time when the officer concerned is taking a career break determined under regulation 33(12) of the Police Regulations 2003 (leave)(**31**).

(2) A period is—

- (a) a period specified in accordance with regulation 17(6)(c);
- (b) the validity period of a written improvement notice specified in regulation 18(4);
- (c) a period specified in accordance with regulation 25(6)(c);
- (d) the validity period of a final written improvement notice specified in regulation 26(4);
- (e) a period specified under regulation 46(7)(c), (d) or (8)(a);
- (f) the validity period of a final written improvement notice extended under regulation 46(8)(c).

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(31) S.I. 2003/527.

## Meeting following investigation under Schedule 3 to the 2002 Act

12.—(1) The appropriate authority must direct the line manager of the officer concerned to take the action specified in paragraph (2), (3) or (4), as the case may be, where—

- (a) regulation 32 does not apply, and
- (b) the appropriate authority—
  - (i) receives an investigator’s report submitted under paragraph 22 or 24A of Schedule 3 to the 2002 Act (final reports on investigations)(32), and in making a determination under paragraph 24(6) (action by the appropriate authority in response to an investigation report)(33) of 24C(4) of that Schedule (action by the Director General in response to an investigation report)(34), considers that the performance of a police officer is unsatisfactory;
  - (ii) has a duty under paragraph 23(5B) of that Schedule (duties of appropriate authority in relation to direction by Director General to bring disciplinary proceedings)(35) to comply with a direction to bring disciplinary proceedings, following a determination under paragraph 23(5A)(b) of that Schedule (duties of Director General on receipt or completion of report on investigation)(36) that a person’s performance is unsatisfactory;
  - (iii) accepts a recommendation made under paragraph 25(4C)(c) of that Schedule (reviews with respect to an investigation)(37) that misconduct proceedings of the form specified in the recommendation are brought;
  - (iv) accepts a recommendation made under paragraph 25(4E)(c) of that Schedule that misconduct proceedings of the form specified in the recommendation are brought;
  - (v) accepts a recommendation made under paragraph 27(3A) of that Schedule (recommendation of Director General to appropriate authority)(38) in relation to the unsatisfactory performance of a police officer, or
  - (vi) has a duty under paragraph 27(4)(b) of that Schedule (duties with respect to disciplinary proceedings etc)(39) to comply with a direction to give effect to a recommendation referred to in paragraph (iii) or (v).

(2) In a case where—

- (a) the officer concerned has received a written improvement notice under regulation 18 or 46 in relation to unsatisfactory performance which is similar to or connected with the unsatisfactory performance to which the determination mentioned in paragraph (1)(b)(i) or (ii) or the recommendation mentioned in paragraph (1)(b)(iii), (iv) or (v) relates, and

(32) Paragraph 22 was substituted by paragraphs 1, 11 and 21 of Schedule 12 to the Serious Organised Crime and Police Act 2005 (“the 2005 Act”) and amended by paragraphs 1, 3 and 12 of Schedule 23 to the Criminal Justice and Immigration Act 2008 (“the 2008 Act”) and section 19 of, and paragraph 47 of Schedule 5, and paragraphs 15 and 56 of Schedule 9, to the Policing and Crime Act 2017 (“the 2017 Act”). Paragraph 24A was inserted by paragraphs 1, 11 and 24 of Schedule 12 to the 2005 Act and amended by paragraphs 1, 3 and 15 of Schedule 23 to the 2008 Act and section 18 of, and paragraphs 9, 28 and 47 of Schedule 5, and paragraphs 15 and 56 of Schedule 9, to the 2017 Act.

(33) Paragraph 24(6) was substituted by paragraph 14(6) of the Schedule 23 to the 2008 Act and amended by paragraph 14(3) of Schedule 14 to the Police Reform and Social Responsibility Act 2011 and paragraphs 27(2) and 47(h)(xiii) of Schedule 5 to the 2017 Act.

(34) Paragraph 24C was inserted by paragraphs 1, 11 and 24 of Schedule 12 to the 2005 Act and amended by section 138 of, and paragraph 95 of Schedule 11 to, the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12) (“the 2014 Act”) and paragraphs 15 and 56 of Schedule 9 to the 2017 Act.

(35) Paragraph 23(5B) was inserted by paragraphs 9 and 26 of Schedule 5 to the 2017 Act.

(36) Paragraph 23(5A) was inserted by paragraphs 9 and 26 of Schedule 5 to the 2017 Act and amended by paragraphs 15 and 56 of Schedule 9 to that Act.

(37) Paragraph 25(4A) to (4J) was inserted by paragraphs 29 and 34(1) and (5) of Schedule 5 to the 2017 Act and amended by paragraphs 15 and 56 of Schedule 9 to that Act.

(38) Paragraph 27(3A) was inserted by section 138(2) and (4) of the 2014 Act and amended by paragraph 56(2) of Schedule 9 to the 2017 Act.

(39) Paragraph 27(4) was amended by paragraphs 15 and 56 of Schedule 9 to the 2017 Act.

(b) the validity period of the written improvement notice, within the meaning of regulation 18(4) or 46(7)(d), has not expired,

the line manager must require the officer to attend a second stage meeting.

(3) In a case where—

(a) the officer concerned has received a final written improvement notice under regulation 26 or 46 in relation to unsatisfactory performance which is similar to or connected with the unsatisfactory performance to which the determination mentioned in paragraph (1)(b)(i) or (ii) or the recommendation mentioned in paragraph (1)(b)(iii), (iv) or (v) relates, and

(b) the validity period of the final written improvement notice, within the meaning of regulation 26(4) or paragraph (7)(d), or, where the period is extended under paragraph (8), paragraph (8)(c), of regulation 46 has not expired,

the line manager must require the officer to attend a third stage meeting.

(4) In any other case, the line manager must require the officer concerned to attend a first stage meeting.

(5) The line manager must comply with a direction given by the appropriate authority under paragraph (1).

(6) Where a police officer is required to attend a meeting under this regulation—

(a) regulations 16 to 21 apply, if the meeting is a first stage meeting;

(b) regulations 23 to 29 apply, if the meeting is a second stage meeting; and

(c) regulations 31, 34 to 39 and 42 to 49 apply, if the meeting is a third stage meeting,

but this is subject to paragraphs (7) and (8).

(7) Subject to the harm test under these Regulations (see regulation 4(3)), the duty to provide documents in each of regulations 16(2), 23(2) and 31(2) has effect as a duty to provide the officer concerned with a copy of—

(a) the investigator's report submitted under paragraph 22 or 24A of Schedule 3 to the 2002 Act;

(b) any determination of the Director General under paragraph 23(5A)(b) of that Schedule;

(c) any recommendation of the Director General made under paragraph 25(4C)(c) of that Schedule,

(d) any recommendation of a local policing body made under paragraph 25(4E)(c) of that Schedule, and

(e) any recommendation of the Director General made under paragraph 27(3A) of that Schedule.

(8) Where a police officer is required to attend a third stage meeting under paragraph (3) by reason of the fact that the officer is subject to a final written improvement notice issued under regulation 46—

(a) the meeting must be conducted by the same panel as conducted the initial third stage meeting;

(b) regulation 48(11) to (15) apply in relation to that panel, and

(c) the officer concerned does not have the right to object to panel members under regulation 35, except in accordance with regulation 48(15).

(9) Where the appropriate authority fails to make the determination referred to in paragraph (1)(b)(i) (in so far as it involves consideration of the performance of a police officer) before the end of 15 working days beginning with the first working day after receipt of the investigator's report, it must notify the officer concerned of the reason for this.

### **Provision of information to the Director General**

- 13.**—(1) This regulation applies in a case where—
- (a) paragraph 18 or 19 of Schedule 3 to the 2002 Act (investigations directed by or by the Director General) applied, or
  - (b) paragraph 16 of that Schedule (investigations by the appropriate authority on its own behalf) applied and—
    - (i) the Director General—
      - (aa) made a recommendation under paragraph 25(4C)(c) of that Schedule (reviews with respect to an investigation) which the appropriate authority accepted;
      - (bb) made a recommendation under paragraph 27(3A) of that Schedule (recommendation of Director General to appropriate authority) which the appropriate authority accepted, or
      - (cc) gave a direction to the appropriate authority under paragraph 27(4)(a) of that Schedule (direction by Director General where appropriate authority does not take steps to secure that full effect is given to Director General’s recommendation), or
    - (ii) a local policing body made a recommendation under paragraph 25(4E)(c) of that Schedule (reviews with respect to an investigation) which the appropriate authority accepted.
- (2) Where this regulation applies, the appropriate authority must—
- (a) send the Director General a copy of—
    - (i) any written record and written improvement notice given to the officer concerned under regulation 18(5);
    - (ii) any written notice and written summary given to the officer concerned under regulation 21(9);
    - (iii) any written notice as to improvement in performance or attendance under regulation 22(1)(b);
    - (iv) any written record and final written improvement notice given to the officer concerned under regulation 26(5);
    - (v) any written notice and written summary given to the officer concerned under regulation 29(9);
    - (vi) any written notice as to improvement in performance or attendance under regulation 30(1)(b);
    - (vii) any written decision given to the officer concerned under regulation 45(3);
    - (viii) any final written improvement notice issued or extended under regulation 46(3);
    - (ix) any written improvement notice issued under regulation 46(6);
    - (x) any written notice as to improvement in performance or attendance under regulation 48(1)(b), and
  - (b) notify the Director General if it extends, under regulation 10(1), any period specified in accordance with regulation 17(6)(c), 25(6)(c) or 46(7)(c) or (8)(a).

### **Meeting following referral under the Conduct Regulations**

**14.**—(1) Where neither regulation 24 nor regulation 32 applies and the appropriate authority assesses under regulation 14(2)(b), 23(5)(b) or 27(2)(a)(iii) of the Conduct Regulations that a matter should be referred to be dealt with under these Regulations—

- (a) the appropriate authority must direct the line manager of the officer concerned to take the action specified in regulation 12(2), (3) or (4), as the case may be, and
- (b) paragraphs (2) to (8) of regulation 12 apply, with the following modifications—
  - (i) in each of paragraphs (2)(a) and (3)(a), for the words from “the determination” to “(1)(c) or (d)” substitute “the assessment mentioned in regulation 14(1)”;
  - (ii) in paragraph (5), for “paragraph (1)” substitute “regulation 14(2)(a)”;
  - (iii) in paragraph (6), for “this regulation” substitute “regulation 14”;
  - (iv) in paragraph (7), for sub-paragraphs (a) to (c) substitute “, where relevant, the investigator’s report submitted under regulation 21 of the Conduct Regulations.”.

(2) In paragraph (1)(b)(iv), “investigator” is to be construed in accordance with the definition of that word in regulation 2(1) of the Conduct Regulations.

## **PART 3**

### **First stage**

#### **Circumstances in which a first stage meeting may be required**

**15.** Where the line manager of a police officer considers that the performance or attendance of that officer is unsatisfactory, the line manager may require the officer concerned to attend a meeting (in these Regulations referred to as a first stage meeting) to discuss the performance or attendance of the officer.

#### **Arrangement of first stage meeting**

**16.**—(1) Where the line manager requires a police officer to attend a first stage meeting, the line manager must give a written notice to the officer concerned—

- (a) requiring the officer to attend a first stage meeting with the line manager;
- (b) informing the officer of the procedures for determining the date and time of the meeting under paragraphs (4) to (7);
- (c) summarising the reasons why the officer’s performance or attendance is considered unsatisfactory;
- (d) informing the officer of the possible outcomes of a first stage meeting, a second stage meeting and a third stage meeting;
- (e) informing the officer that a human resources professional or a police officer may attend the meeting to advise the line manager on the proceedings;
- (f) informing the officer that, if the officer consents, any other person specified in the notice may attend the meeting;
- (g) where the officer is a member of a police force, informing the officer that the officer may seek advice from a representative of a staff association;
- (h) informing the officer that the officer may be accompanied and represented at the meeting by a police friend, and

- (i) informing the officer that the officer must provide to the line manager in advance of the meeting a copy of any document the officer intends to rely on at the meeting.
- (2) The notice must be accompanied by a copy of any document relied on by the line manager when considering that the performance or attendance of the officer concerned is unsatisfactory.
- (3) Where a reflective review development report has been produced under regulation 70 of the Conduct Regulations in relation to a matter which is similar to or connected with unsatisfactory performance to be discussed at the first stage meeting, the notice must also be accompanied by a copy of that report.
- (4) The line manager must, if reasonably practicable, agree a date and time for the meeting with the officer concerned.
- (5) Where no date and time is agreed, the line manager must specify a date and time for the meeting.
- (6) Where a date and time is specified and—
  - (a) the officer concerned or a police friend will not be available at that time, and
  - (b) the officer proposes an alternative time which satisfies paragraph (7),the meeting must be postponed to the time proposed by the officer.
- (7) An alternative time must—
  - (a) be reasonable, and
  - (b) fall before the end of 5 working days beginning with the first working day after the day specified by the line manager under paragraph (5).
- (8) The line manager must give the officer concerned a written notice of the date and time of the first stage meeting determined in accordance with paragraphs (4) to (7) and of the place of the meeting.
- (9) In advance of the first stage meeting, the officer concerned must provide the line manager with a copy of any document the officer intends to rely on at the meeting.

#### **Procedure at first stage meeting**

- 17.—(1) This regulation applies to the procedure to be followed at the first stage meeting.
- (2) The meeting must be conducted by the line manager.
- (3) A human resources professional or a police officer may attend the meeting to advise the line manager on the proceedings.
- (4) Any other person specified in the notice referred to in regulation 16(1) may attend the meeting if the officer concerned consents.
- (5) The line manager must—
  - (a) explain to the officer concerned the reasons why the line manager considers that the performance or attendance of the officer is unsatisfactory;
  - (b) provide the officer with an opportunity to make representations in response, and
  - (c) provide the police friend (if the officer has one) with an opportunity to address the meeting in accordance with regulation 8(3)(a).
- (6) If, after considering such representations (if any) and address (if any), the line manager finds that the performance or attendance of the officer concerned has been unsatisfactory, the line manager must—
  - (a) inform the officer in what respect the officer's performance or attendance is considered unsatisfactory;

- (b) inform the officer of the improvement that is required in performance or attendance;
  - (c) inform the officer that, if a sufficient improvement is not made within such reasonable period as the line manager specifies (being a period not exceeding 12 months), the officer may be required to attend a second stage meeting in accordance with regulation 22;
  - (d) inform the officer that the officer will receive a written improvement notice, and
  - (e) inform the officer that if sufficient improvement is not maintained during any part of the validity period of the notice remaining after the expiry of the period specified in accordance with sub-paragraph (c), the officer may be required to attend a second stage meeting in accordance with regulation 22.
- (7) The line manager may, if the line manager considers it appropriate, recommend that the officer concerned seek assistance in relation to any matter affecting the officer's health or welfare.
- (8) The line manager may postpone or adjourn the meeting to a specified time, or date and time, if it appears to the line manager necessary or expedient to do so.

### **Procedure following first stage meeting**

**18.**—(1) The line manager must, as soon as reasonably practicable after the conclusion of the first stage meeting—

- (a) cause to be prepared a written record of the meeting, and
  - (b) where the line manager found at the meeting that the performance or attendance of the officer concerned has been unsatisfactory, cause to be prepared a written improvement notice.
- (2) Where the officer concerned has failed to attend a first stage meeting, if the line manager finds that the performance or attendance of the officer has been unsatisfactory, the line manager must as soon as reasonably practicable—
- (a) cause to be prepared a written improvement notice, and
  - (b) if the police friend attended the meeting, cause to be prepared a written record of the meeting.
- (3) A written improvement notice must—
- (a) record the matters of which the officer concerned was informed (or would have been informed had the officer attended the meeting) under sub-paragraphs (a) to (c) and (e) of regulation 17(6);
  - (b) state the period for which it is valid, and
  - (c) be signed and dated by the line manager.
- (4) A written improvement notice is valid for a period of 12 months beginning with the date of the notice.
- (5) The line manager must give a copy of any written record and any written improvement notice to the officer concerned as soon as reasonably practicable after they have been prepared.
- (6) Where the line manager found that the performance or attendance of the officer concerned has been unsatisfactory and has caused to be prepared a written improvement notice, the line manager must, at the same time as giving the documents mentioned in paragraph (5), give a written notice to the officer of—
- (a) the matters set out in regulation 19;
  - (b) the name of the second line manager to whom a written notice of appeal must be given under regulation 19(5);
  - (c) the officer's rights under paragraph (7), and

(d) the effect of paragraphs (8) and (9).

(7) Subject to paragraph (9), the officer concerned may submit written comments on any written record to the line manager before the end of 7 working days beginning with the first working day after the day on which the officer receives the copy.

(8) The line manager may, on the application of the officer concerned, extend the period specified in paragraph (7) if satisfied that it is appropriate to do so.

(9) The officer concerned may not submit written comments on the written record if the officer has exercised a right to appeal under regulation 19.

(10) The line manager must ensure that any written record, any written improvement notice and any written comments of the officer concerned on the written record are retained together and filed.

### **Appeal against the finding and outcome of a first stage meeting**

**19.**—(1) This regulation applies where, at the first stage meeting, the line manager found that the performance or attendance of the officer concerned has been unsatisfactory.

(2) Where this regulation applies, the officer concerned may appeal against—

- (a) that finding, or
- (b) any of the matters specified in paragraph (3) and recorded in the written improvement notice (in these Regulations referred to as the relevant terms of the written improvement notice),

or both.

(3) These matters are—

- (a) the respect in which the performance or attendance of the officer concerned is considered unsatisfactory;
- (b) the improvement that is required in performance or attendance;
- (c) the length of the period specified by the line manager in accordance with regulation 17(6) (c).

(4) The only grounds of appeal under this regulation are—

- (a) that the finding of unsatisfactory performance or attendance was unreasonable;
- (b) that any of the relevant terms of the written improvement notice are unreasonable;
- (c) that there is evidence that could not reasonably have been considered at the first stage meeting which could have materially affected the finding of unsatisfactory performance or attendance or any of the relevant terms of the written improvement notice;
- (d) that there was a breach of the procedures set out in these Regulations or other unfairness which could have materially affected the finding of unsatisfactory performance or attendance or any of the relevant terms of the written improvement notice.

(5) The officer concerned may commence an appeal by giving a written notice of appeal to the second line manager before the end of 7 working days beginning with the first working day after receipt of the documents referred to in regulation 18(5).

(6) The notice must—

- (a) set out the grounds of appeal, and
- (b) be accompanied by any evidence on which the officer relies.

(7) The second line manager may, on the application of the officer concerned, extend the period specified in paragraph (5) if satisfied that it is appropriate to do so.

(8) Subject to paragraph (9), the meeting at which the appeal is to be heard (referred to in these Regulations as the first stage appeal meeting) must take place before the end of 7 working days beginning with the first working day after the day on which the second line manager receives the notice under paragraph (5).

(9) A first stage appeal meeting may take place after the period of 7 working days referred to in paragraph (8) if the second line manager considers it necessary or expedient, in which case the second line manager must give the officer a written notice of the reasons.

### **Arrangement of first stage appeal meeting**

**20.**—(1) As soon as reasonably practicable after receiving the notice of appeal referred to in regulation 19(5), the second line manager must give the officer concerned a written notice—

- (a) informing the officer of the procedures for determining the date and time of the meeting under paragraphs (2) to (5);
- (b) informing the officer that a human resources professional or a police officer may attend the meeting to advise the second line manager on the proceedings;
- (c) informing the officer that, if the officer consents, any other person specified in the notice may attend the meeting;
- (d) where the officer concerned is a member of a police force, informing the officer that the officer may seek advice from a representative of a staff association, and
- (e) informing the officer that the officer may be accompanied and represented at the meeting by a police friend.

(2) The second line manager must, if reasonably practicable, agree a date and time for the meeting with the officer concerned.

(3) Where no date and time is agreed, the second line manager must specify a date and time for the meeting.

(4) Where a date and time is specified and—

- (a) the officer concerned or the police friend will not be available at that time, and
- (b) the officer proposes an alternative time which satisfies paragraph (5),

the meeting must be postponed to the time proposed by the officer.

(5) An alternative time must—

- (a) be reasonable, and
- (b) fall before the end of 5 working days beginning with the first working day after the day specified by the second line manager under paragraph (3).

(6) The second line manager must give the officer concerned a written notice of the date and time of the first stage appeal meeting determined in accordance with paragraphs (2) to (5) and of the place of the meeting.

### **Procedure at first stage appeal meeting**

**21.**—(1) This regulation applies to the procedure to be followed at a first stage appeal meeting.

(2) The meeting must be conducted by the second line manager.

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

(4) Any other person specified in the notice referred to in regulation 20(1) may attend the meeting if the officer concerned consents.

- (5) The second line manager must—
  - (a) provide the officer concerned with an opportunity to make representations, and
  - (b) provide the police friend (if the officer has one) with an opportunity to address the meeting in accordance with regulation 8(3)(a).
- (6) After considering such representations (if any) and address (if any), the second line manager may—
  - (a) confirm or reverse the finding of unsatisfactory performance or attendance;
  - (b) confirm or vary the relevant terms of the written improvement notice appealed against.
- (7) Where the second line manager reverses the finding of unsatisfactory performance or attendance, the second line manager must also revoke the written improvement notice.
- (8) The second line manager may postpone or adjourn the meeting to a specified time, or date and time, if it appears to the second line manager necessary or expedient to do so.
- (9) As soon as reasonably practicable after the conclusion of the meeting and in any event before the end of 3 working days beginning with the first working day after the conclusion of the meeting, the officer concerned must be given a written notice of the second line manager's decision and a written summary of the reasons for that decision.
- (10) Where the second line manager has—
  - (a) reversed the finding of unsatisfactory performance or attendance and revoked the written improvement notice, or
  - (b) varied any of the relevant terms of the written improvement notice,the decision of the second line manager takes effect by way of substitution for the finding, the written improvement notice issued or the relevant terms of the written improvement notice appealed against immediately after the first stage meeting.

## PART 4

### Second stage

#### **Circumstances in which a second stage meeting may be required**

- 22.**—(1) Where a police officer has received a written improvement notice, as soon as reasonably practicable after the date with which the period specified in accordance with regulation 17(6)(c) ends—
- (a) the line manager must assess the performance or attendance of the officer concerned during that period, in consultation with the second line manager or a human resources professional (or both), and
  - (b) the line manager must give the officer a written notice as to whether the line manager considers that there has been a sufficient improvement in performance or attendance during that period.
- (2) If the line manager considers that there has not been a sufficient improvement, the line manager must, at the same time as giving a notice under paragraph (1)(b), also give the officer concerned a written notice that the officer is required to attend a meeting (in these Regulations referred to as a second stage meeting) to consider performance or attendance.
- (3) The officer concerned may be required to attend a second stage meeting under paragraph (4) where—
- (a) the officer has not been required to attend a second stage meeting under paragraph (2), or

- (b) the officer has been required to attend a second stage meeting under paragraph (2) but the second line manager did not make a finding of unsatisfactory performance or attendance at that meeting.
- (4) If the line manager considers that the officer concerned has failed to maintain a sufficient improvement in performance or attendance during any part of the validity period of the written improvement notice remaining after the expiry of the period specified in accordance with regulation 17(6)(c), the line manager must give the officer a written notice of the matters set out in paragraph (5).
- (5) Those matters are—
  - (a) that the line manager is of the view mentioned in paragraph (4), and
  - (b) that the officer concerned is required to attend a meeting (in these Regulations referred to as a second stage meeting) to consider performance or attendance.
- (6) Any second stage meeting which a police officer is required to attend other than such a meeting under regulation 24 must concern unsatisfactory performance or attendance which is similar to or connected with the unsatisfactory performance or attendance referred to in the written improvement notice.

#### **Arrangement of second stage meeting**

- 23.**—(1) Where the line manager requires the officer concerned to attend a second stage meeting, the second line manager must as soon as reasonably practicable give the officer a written notice—
- (a) referring to the requirement that the officer attend a second stage meeting with the second line manager;
  - (b) informing the officer of the procedures for determining the date and time of the meeting under paragraphs (3) to (6);
  - (c) summarising the reasons why the officer's performance or attendance is considered unsatisfactory;
  - (d) informing the officer of the possible outcomes of a second stage meeting and a third stage meeting;
  - (e) informing the officer that the line manager may attend the meeting;
  - (f) informing the officer that a human resources professional or a police officer may attend the meeting to advise the second line manager on the proceedings;
  - (g) informing the officer that, if the officer consents, any other person specified in the notice may attend the meeting;
  - (h) where the officer is a member of a police force, informing the officer that the officer may seek advice from a representative of a staff association;
  - (i) informing the officer that the officer may be accompanied and represented at the meeting by a police friend, and
  - (j) informing the officer that the officer must provide to the second line manager in advance of the meeting a copy of any document the officer intends to rely on at the meeting.
- (2) The notice must be accompanied by a copy of any document relied on by the line manager when the line manager formed the view referred to in regulation 22(2) or (4), as the case may be.
- (3) The second line manager must, if reasonably practicable, agree a date and time for the meeting with the officer concerned.
- (4) Where no date and time is agreed, the second line manager must specify a date and time for the meeting.
- (5) Where a date and time is specified and—

- (a) the officer concerned or a police friend will not be available at that time, and
  - (b) the officer proposes an alternative time which satisfies paragraph (6),
- the meeting must be postponed to the time proposed by the officer.
- (6) An alternative time must—
    - (a) be reasonable, and
    - (b) fall before the end of 5 working days beginning with the first working day after the day specified by the second line manager under paragraph (4).
  - (7) The second line manager must give the officer concerned a written notice of the date and time of the second stage meeting determined in accordance with paragraphs (3) to (6) and of the place of the meeting.
  - (8) In advance of the second stage meeting, the officer concerned must provide the second line manager with a copy of any document the officer intends to rely on at the meeting.

#### **Circumstances in which a second stage meeting may be required without a first stage meeting**

- 24.**—(1) This regulation applies where—
- (a) regulation 32 does not apply, and
  - (b) conditions A and B are satisfied.
- (2) Condition A is that the appropriate authority assesses under regulation 23(5)(b) or 27(2)(a)(iii) of the Conduct Regulations that a matter should be referred to be dealt with under these Regulations.
- (3) Condition B is that the appropriate authority—
- (a) considers that there are reasonable grounds, based on evidence from an investigation under Schedule 3 to the 2002 Act or an investigation or misconduct proceedings under the Conduct Regulations, to conclude that the officer concerned has demonstrated a serious inability or serious failure to perform the duties of the officer's rank or the role the officer is currently undertaking to a satisfactory standard or level, such that a referral to a second stage meeting is appropriate, and
  - (b) having consulted the officer and the line manager, or second line manager, of the officer, is satisfied that the officer has been given a reasonable opportunity to address that inability or failure to perform, but has failed to make a sufficient improvement.
- (4) The appropriate authority must as soon as reasonably practicable give the officer concerned and the line manager of the officer a written notice of the matters set out in paragraph (5) where this regulation applies.
- (5) Those matters are—
- (a) that the appropriate authority is of the view mentioned in paragraph (3);
  - (b) the reasons why the performance of the officer concerned is assessed as unsatisfactory;
  - (c) the reasons why it is considered appropriate for the matter to be referred to a second stage meeting;
  - (d) summary evidence in support of the conclusion that the performance is unsatisfactory, and
  - (e) that the officer is required to attend a meeting (in these Regulations referred to as a second stage meeting) to consider the officer's performance.
- (6) Where notice has been given in accordance with paragraph (4), the line manager must require the officer concerned to attend a second stage meeting.
- (7) Where a police officer is required to attend a second stage meeting under this regulation, regulations 23 and 25 to 29 apply with the following modifications—

- (a) omit regulation 23(2);
- (b) in regulation 25(6), omit the words from “during the period” to “specified period”;
- (c) in regulation 27(2)(c), for “line manager” substitute “appropriate authority”;
- (d) in regulation 27(4)(a), for the words from “as the meeting” to the end substitute “as the conclusions of the appropriate authority under regulation 24(3) were unreasonable”.

### **Procedure at second stage meeting**

- 25.**—(1) This regulation applies to the procedure to be followed at the second stage meeting.
- (2) The meeting must be conducted by the second line manager and may be attended by the line manager.
- (3) A human resources professional or a police officer may attend the meeting to advise the second line manager on the proceedings.
- (4) Any other person specified in the notice referred to in regulation 23(1) may attend the meeting if the officer concerned consents.
- (5) The second line manager must—
- (a) explain to the officer concerned the reasons why the officer has been required to attend the meeting;
  - (b) provide the officer with an opportunity to make representations in response, and
  - (c) provide the police friend (if the officer has one) with an opportunity to address the meeting in accordance with regulation 8(3)(a).
- (6) If, after considering such representations (if any) and address (if any), the second line manager finds that the performance or attendance of the officer concerned has been unsatisfactory during the period specified in accordance with regulation 17(6)(c) or during any part of the validity period of the written improvement notice remaining after the expiry of that specified period, the second line manager must—
- (a) inform the officer in what respect the performance or attendance is considered unsatisfactory;
  - (b) inform the officer of the improvement that is required in performance or attendance;
  - (c) inform the officer that, if a sufficient improvement is not made within such reasonable period as the second line manager specifies (being a period not exceeding 12 months), the officer may be required to attend a third stage meeting in accordance with regulation 30 and the second line manager must specify the date with which this period ends;
  - (d) inform the officer that the officer will receive a final written improvement notice, and
  - (e) inform the officer that if the sufficient improvement referred to in sub-paragraph (c) is not maintained during any part of the validity period of the notice remaining after the expiry of the period specified in accordance with sub-paragraph (c), the officer may be required to attend a third stage meeting in accordance with regulation 30.
- (7) The second line manager may, if the second line manager considers it appropriate, recommend that the officer concerned seek assistance in relation to any matter affecting the officer’s health or welfare.
- (8) The second line manager may postpone or adjourn the meeting to a specified time, or date and time, if it appears to the second line manager necessary or expedient to do so.

### **Procedure following second stage meeting**

**26.**—(1) The second line manager must, as soon as reasonably practicable after the conclusion of the second stage meeting—

- (a) cause to be prepared a written record of the meeting, and
- (b) where the second line manager made a finding at the meeting as set out in regulation 25(6), cause to be prepared a final written improvement notice.

(2) Where the officer concerned has failed to attend a second stage meeting, if the second line manager makes a finding as set out in regulation 25(6), the second line manager must as soon as reasonably practicable—

- (a) cause to be prepared a final written improvement notice, and
- (b) if the police friend attended the meeting, cause to be prepared a written record of the meeting.

(3) A final written improvement notice must—

- (a) record the matters of which the officer concerned was informed (or would have been informed had the officer attended the meeting) under sub-paragraphs (a) to (c) and (e) of regulation 25(6);
- (b) state the period for which it is valid; and
- (c) be signed and dated by the second line manager.

(4) A final written improvement notice is valid for a period of twelve months beginning with the date of the notice.

(5) The second line manager must give a copy of any written record and any final written improvement notice to the officer concerned as soon as reasonably practicable after they have been prepared.

(6) Where the second line manager made a finding as set out in regulation 25(6) and has caused to be prepared a final written improvement notice, the second line manager must, at the same time as giving the documents mentioned in paragraph (5), give the officer concerned a written notice of—

- (a) the matters set out in regulation 27(3);
- (b) the name of the senior manager to whom a written notice of appeal must be given under regulation 27(5);
- (c) the officer's rights under paragraph (7), and
- (d) the effect of paragraphs (8) and (9).

(7) Subject to paragraph (9), the officer concerned may submit written comments on the written record to the second line manager before the end of 7 working days beginning with the first working day after the day on which the copy is received by the officer.

(8) The second line manager may, on the application of the officer concerned, extend the period specified in paragraph (7) if satisfied that it is appropriate to do so.

(9) The officer concerned may not submit written comments on the written record if the officer has exercised a right to appeal under regulation 27.

(10) The second line manager must ensure that any written record, any final written improvement notice and any written comments of the officer concerned on the written record are retained together and filed.

### **Appeal against the finding and outcome of a second stage meeting**

27.—(1) This regulation applies where, at the second stage meeting, the second line manager found that the performance or attendance of the officer concerned has been unsatisfactory as set out in regulation 25(6).

(2) Where this regulation applies, the officer concerned may appeal against one or more of the following—

- (a) that finding;
- (b) any of the matters specified in paragraph (3) and recorded in the final written improvement notice (in these Regulations referred to as the relevant terms of the final written improvement notice);
- (c) the decision of the line manager to require the officer concerned to attend the second stage meeting.

(3) The matters are—

- (a) the respect in which the performance or attendance of the officer concerned is considered unsatisfactory;
- (b) the improvement that is required in performance or attendance;
- (c) the length of the period specified by the second line manager in accordance with regulation 25(6)(c).

(4) The only grounds of appeal under this regulation are—

- (a) that, in relation to an appeal under paragraph (2)(c), the officer concerned should not have been required to attend the second stage meeting as the meeting did not concern unsatisfactory performance or attendance which is similar to or connected with the unsatisfactory performance or attendance referred to in the written improvement notice;
- (b) that the finding of unsatisfactory performance or attendance was unreasonable;
- (c) that any of the relevant terms of the final written improvement notice are unreasonable;
- (d) that there is evidence that could not reasonably have been considered at the second stage meeting which could have materially affected the finding of unsatisfactory performance or attendance or any of the relevant terms of the final written improvement notice;
- (e) that there was a breach of the procedures set out in these Regulations or other unfairness which could have materially affected the finding of unsatisfactory performance or attendance or any of the relevant terms of the final written improvement notice.

(5) An appeal must be commenced by the officer concerned giving a written notice of appeal to the senior manager before the end of 7 working days beginning with the first working day after receipt of the documents referred to in regulation 26(5).

(6) The notice must—

- (a) set out the grounds of appeal of the officer concerned, and
- (b) be accompanied by any evidence on which the officer relies.

(7) The senior manager may, on the application of the officer concerned, extend the period specified in paragraph (5) if satisfied that it is appropriate to do so.

(8) Subject to paragraph (9), the meeting at which the appeal will be heard (referred to in these Regulations as a second stage appeal meeting) must take place before the end of 7 working days beginning with the first working day after the day on which the notice under paragraph (5) is received by the senior manager.

(9) A second stage appeal meeting may take place after the period of 7 working days referred to in paragraph (8) if the senior manager considers it necessary or expedient, in which case the senior manager must give the officer concerned a written notice of the reasons.

### **Arrangement of second stage appeal meeting**

**28.**—(1) As soon as reasonably practicable after receiving the notice of appeal referred to in regulation 27(5), the senior manager must give the officer concerned a written notice—

- (a) informing the officer of the procedures for determining the date and time of the meeting under paragraphs (2) to (5);
- (b) informing the officer that a human resources professional or a police officer may attend the meeting to advise the senior manager on the proceedings;
- (c) informing the officer that, if the officer consents, any other person specified in the notice may attend the meeting;
- (d) where the officer is a member of a police force, informing the officer that the officer may seek advice from a representative of a staff association; and
- (e) informing the officer that the officer may be accompanied and represented at the meeting by a police friend.

(2) The senior manager must, if reasonably practicable, agree a date and time for the meeting with the officer concerned.

(3) Where no date and time is agreed, the senior manager must specify a date and time for the meeting.

(4) Where a date and time is specified and—

- (a) the officer concerned or the police friend will not be available at that time, and
- (b) the officer proposes an alternative time which satisfies paragraph (5),

the meeting must be postponed to the time proposed by the officer.

(5) An alternative time must—

- (a) be reasonable, and
- (b) fall before the end of 5 working days beginning with the first working day after the day specified by the senior manager under paragraph (3).

(6) The senior manager must give the officer concerned a written notice of the date, time and place of the second stage appeal meeting.

### **Procedure at second stage appeal meeting**

**29.**—(1) This regulation applies to the procedure to be followed at a second stage appeal meeting.

(2) The meeting must be conducted by the senior manager.

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

(4) Any other person specified in the notice referred to in regulation 28(1) may attend the meeting if the officer concerned consents.

(5) The senior manager must—

- (a) provide the officer concerned with an opportunity to make representations, and
- (b) provide the police friend (if the officer has one) with an opportunity to address the meeting in accordance with regulation 8(3)(a).

(6) After considering such representations (if any) and address (if any), the senior manager may—

- (a) in an appeal under regulation 27(2)(c), make a finding that the officer concerned should not have been required to attend the second stage meeting and reverse the finding made at that meeting;
- (b) confirm or reverse the finding of unsatisfactory performance or attendance made at the second stage meeting;
- (c) confirm or vary the relevant terms of the final written improvement notice appealed against.

(7) Where the senior manager reverses the finding of unsatisfactory performance or attendance made at the second stage meeting, the senior manager must also revoke the final written improvement notice.

(8) The senior manager may postpone or adjourn the meeting to a specified time, or date and time, if it appears to the senior manager necessary or expedient to do so.

(9) As soon as reasonably practicable after the conclusion of the meeting and in any event before the end of 3 working days beginning with the first working day after the conclusion of the meeting, the officer concerned must be given a written notice of the senior manager's decision and a written summary of the reasons for that decision.

(10) Where the senior manager has—

- (a) reversed the finding of unsatisfactory performance or attendance made at the second stage meeting (see regulation 25(6)) and revoked the final written improvement notice, or
- (b) varied any of the relevant terms of the final written improvement notice,

the decision of the senior manager takes effect by way of substitution for the finding and the final written improvement notice issued or the relevant terms of the final written improvement notice appealed against immediately after the second stage meeting.

## PART 5

### Third stage

#### **Assessment following second stage meeting**

**30.**—(1) Where a police officer has received a final written improvement notice, as soon as reasonably practicable after the date with which the period specified in accordance with regulation 25(6)(c) ends—

- (a) the line manager must assess the performance or attendance of the officer concerned during that period, in consultation with the second line manager or a human resources professional (or both), and
- (b) the line manager must give the officer a written notice as to whether the line manager considers that there has been a sufficient improvement in performance or attendance during that period.

(2) If the line manager considers that there has not been a sufficient improvement, the line manager must, at the same time as the line manager gives a notice under paragraph (1)(b), also give the officer concerned a written notice that the officer is required to attend a meeting (in these Regulations referred to as a third stage meeting) to consider performance or attendance.

(3) The officer concerned may be required to attend a third stage meeting under paragraph (4) where—

- (a) the officer has not been required to attend a third stage meeting under paragraph (2), or

- (b) the officer has been required to attend a third stage meeting under paragraph (2) but the panel did not make a finding of unsatisfactory performance or attendance at that meeting.
- (4) If the line manager considers that the officer concerned has failed to maintain a sufficient improvement in performance or attendance during any part of the validity period of the final written improvement notice remaining after the expiry of the period specified in accordance with regulation 25(6)(c), the line manager must give the officer a written notice of the matters set out in paragraph (5).
- (5) Those matters are—
  - (a) that the line manager is of the view mentioned in paragraph (4), and
  - (b) that the officer concerned is required to attend a meeting (in these Regulations referred to as a third stage meeting) to consider performance or attendance.
- (6) Unless regulation 32 applies, any third stage meeting which a police officer is required to attend must concern unsatisfactory performance or attendance which is similar to or connected with the unsatisfactory performance or attendance referred to in the final written improvement notice.

#### **Arrangement of a third stage meeting**

**31.**—(1) Where the line manager requires the officer concerned to attend a third stage meeting, the senior manager must as soon as reasonably practicable give the officer a written notice—

- (a) referring to the requirement that the officer attend a third stage meeting with a panel appointed by the appropriate authority;
  - (b) informing the officer of the procedures for determining the date and time of the meeting under regulation 38;
  - (c) summarising the reasons why performance or attendance is considered unsatisfactory;
  - (d) informing the officer of the possible outcomes of the meeting;
  - (e) informing the officer that if the outcome is dismissal (whether with notice or with immediate effect), the officer's full name and a description of the conduct which led to dismissal will be added to the police barred list;
  - (f) informing the officer that a human resources professional and a police officer may attend the meeting to advise the panel on the proceedings;
  - (g) informing the officer that a relevant lawyer may attend the meeting to advise the panel on the proceedings and on any question of law that may arise at the meeting;
  - (h) where the officer concerned is a special constable, informing the officer that a special constable will attend the meeting to advise the panel;
  - (i) informing the officer that, if the officer consents, any other person specified in the notice may attend the meeting;
  - (j) where the officer is a member of a police force, informing the officer that the officer may seek advice from a representative of a staff association; and
  - (k) informing the officer that the officer may be accompanied and represented at the meeting by a police friend.
- (2) The notice must be accompanied by a copy of any document relied on by the line manager when the line manager formed the view referred to in regulation 30(2) or (4), as the case may be.
- (3) A third stage meeting under this regulation must not take place unless the officer concerned has been notified of the right to representation under paragraph (1)(k).

### **Circumstances in which a third stage meeting may be required without a prior first or second stage meeting**

**32.**—(1) This regulation applies where the appropriate authority—

- (a) decides that the performance of a police officer constitutes gross incompetence;
- (b) has a duty under paragraph 23(5B) of Schedule 3 to the 2002 Act (duties of appropriate authority in relation to direction by Director General to bring disciplinary proceedings) to comply with a direction, following a determination under paragraph 23(5A)(b) of that Schedule (duties of Director General on receipt or completion of report on investigation)(**40**) that a person's performance is unsatisfactory and amounts to gross incompetence;
- (c) decides to accept a recommendation made under paragraph 25(4C)(c) of that Schedule (reviews with respect to an investigation)(**41**) that misconduct proceedings of the form specified in the recommendation are brought;
- (d) decides to accept a recommendation made under paragraph 25(4E)(c) of that Schedule that misconduct proceedings of the form specified in the recommendation are brought;
- (e) decides to accept a recommendation made under paragraph 27(3A) of that Schedule (recommendation of Director General to appropriate authority)(**42**) that a police officer's performance is unsatisfactory and amounts to gross incompetence, or
- (f) has a duty under paragraph 27(4)(b) of that Schedule (duties with respect to disciplinary proceedings etc)(**43**) to comply with a direction to give effect to a recommendation referred to in sub-paragraph (c) or (e).

(2) The appropriate authority must inform the officer concerned in writing that the officer is required to attend a meeting to consider performance where this regulation applies.

(3) Such meeting is referred to in these Regulations as a third stage meeting, notwithstanding that the officer concerned has not attended a first stage meeting or a second stage meeting in respect of such performance.

### **Arrangement of a third stage meeting without a prior first or second stage meeting**

**33.**—(1) Where the appropriate authority has informed the officer concerned under regulation 32(2) that the officer is required to attend a third stage meeting, the appropriate authority must as soon as reasonably practicable give the officer a written notice—

- (a) referring to the requirement that the officer attend a third stage meeting with a panel appointed by the appropriate authority;
- (b) informing the officer of the procedures for determining the date and time of the meeting under regulation 38;
- (c) summarising the reasons why the officer's performance is considered to constitute gross incompetence;
- (d) informing the officer of the possible outcomes of the meeting;
- (e) informing the officer that if the outcome is dismissal (whether with notice or with immediate effect), the officer's full name and a description of the conduct which led to dismissal will be added to the police barred list;

(40) Paragraph 23(5A) and (5B) was inserted by paragraphs 9 and 26 of Schedule 5 to the Policing and Crime Act 2017 ("the 2017 Act") and paragraph 23(5A) was amended by paragraphs 15 and 56 of Schedule 9 to that Act.

(41) Paragraph 25(4A) to (4J) was inserted by paragraphs 29 and 34(1) and (5) of Schedule 5 to the 2017 Act and amended by paragraphs 15 and 56 of Schedule 9 to that Act.

(42) Paragraph 27(3A) was inserted by section 138(2) and (4) of the Anti-social Behaviour, Crime and Policing Act 2014 ("the 2014 Act") and amended by paragraph 56(2) of Schedule 9 to the 2017 Act.

(43) Paragraph 27(4) was amended by paragraphs 15 and 56 of Schedule 9 to the 2017 Act.

- (f) informing the officer that a human resources professional and a police officer may attend the meeting to advise the panel on the proceedings;
  - (g) informing the officer that a relevant lawyer may attend the meeting to advise the panel on the proceedings and on any question of law that may arise at the meeting;
  - (h) where the officer is a special constable, informing the officer that a special constable must attend the meeting to act as an advisor to the panel;
  - (i) in a case to which regulation 40 applies, informing the officer that the Director General may attend the meeting to make representations;
  - (j) in a case to which regulation 41 applies, informing the officer that the complainant or any interested person may attend the meeting as an observer;
  - (k) in a case to which regulation 42(5) applies, informing the officer that a person nominated by the Director General may attend the meeting as an observer;
  - (l) informing the officer that, if the officer consents, any other person specified in the notice may attend the meeting;
  - (m) in a case to which regulation 42(10) applies, informing the officer that the Director General may direct that the whole or part of the meeting be in public;
  - (n) where the officer is a member of a police force, informing the officer that the officer may seek advice from a representative of a staff association;
  - (o) informing the officer of the effect of regulation 6; and
  - (p) informing the officer that the officer may be accompanied at the meeting by a police friend.
- (2) The notice must be accompanied by a copy of—
- (a) any document relied on by the appropriate authority when it formed the view referred to in sub-paragraph (a) of regulation 32(1), in a case where regulation 32 applies by virtue of that sub-paragraph, or
  - (b) subject to the harm test under these Regulations (see regulation 4(3))—
    - (i) the investigator's report under paragraph 22 or 24A of Schedule 3 to the 2002 Act (reports of final investigations) and the determination of the Director General under paragraph 23(5A)(b) (duties of Director General on receipt or completion of report on investigation), or
    - (ii) in a case where regulation 32 applies by virtue of paragraph (1)(b), (c) or (d), the recommendation of the Director General made under paragraph 25(4C)(c) (reviews with respect to an investigation) or paragraph 27(3A) (recommendation of Director General to appropriate authority), or the recommendation of a local policing body made under paragraph 25(4E)(c), of that Schedule.

### **Appointment of panel members**

**34.**—(1) The third stage meeting must be conducted by a panel comprising a panel chair and two other members.

(2) The panel must be appointed by the appropriate authority and consist of at least one police officer and one human resources professional.

(3) The panel chair must be a member of a police force holding a rank above that of chief superintendent or a senior human resources professional.

(4) The second panel member must be either a police officer or a human resources professional of at least the rank of superintendent or (in the opinion of the appropriate authority) equivalent rank.

(5) The third panel member must be either a police officer or a police staff member of at least the rank of superintendent or (in the opinion of the appropriate authority) equivalent rank.

(6) Each panel member must be of at least the same rank as the officer concerned or (in the opinion of the appropriate authority) equivalent rank.

(7) No panel member may be an interested party.

(8) As soon as reasonably practicable after the panel members have been appointed, the appropriate authority must give the officer concerned a written notice of their names.

(9) As soon as the appropriate authority has appointed the panel members, the appropriate authority must arrange for a copy of any document—

- (a) which was available to the line manager in relation to any first stage meeting;
- (b) which was available to the second line manager in relation to any second stage meeting, or
- (c) which was prepared or submitted under regulation 18, 21, 26, 29, 30, 31, 32 or 33 as the case may be,

to be made available to each panel member, and a copy of any such document must be given to the officer concerned.

(10) In this regulation—

“interested party” means a person whose appointment could reasonably give rise to a concern as to whether the person could act impartially under these Regulations;

“senior human resources professional” means a human resources professional who, in the opinion of the appropriate authority, has sufficient seniority, skills and experience to be a panel chair.

### **Right of officer concerned to object to panel members**

**35.**—(1) The officer concerned may object to the appointment of any of the panel members.

(2) Any such objection must be made in writing to the appropriate authority before the end of 3 working days beginning with the first working day after receipt of the notice referred to in regulation 34(8) and must set out the grounds of objection of the officer concerned.

(3) The appropriate authority must give the officer concerned a written notice as to whether it upholds or rejects an objection to any panel member.

(4) If the appropriate authority upholds an objection, the appropriate authority must remove that member from the panel and must appoint a new member to the panel.

(5) If the appropriate authority appoints a new panel member under paragraph (4), it must ensure that the requirements for the composition of the panel in regulation 34 continue to be met.

(6) As soon as reasonably practicable after any such appointment, the appropriate authority must give the officer concerned a written notice of the name of the new panel member.

(7) The officer concerned may object to the appointment of a panel member appointed under paragraph (4).

(8) Any such objection must be made in writing before the end of 3 working days beginning with the first working day after receipt of the notice referred to in paragraph (6) and must set out the grounds of objection of the officer concerned.

(9) The appropriate authority must comply with paragraphs (3) to (6) in relation to the objection referred to in paragraph (7).

### **Procedure on receipt of notice of third stage meeting 36.**—

(1) Before the end of—

- (a) 14 working days beginning with the first working day after the date on which a notice has been given to the officer concerned under regulation 31 or 33, or

(b) where that period is extended by the panel chair for exceptional circumstances, such extended period,

the officer concerned must comply with paragraphs (2) and (3).

(2) The officer concerned must give the appropriate authority—

(a) a written notice of whether or not the officer accepts that the officer's performance or attendance has been unsatisfactory or that the officer has been grossly incompetent, as the case may be;

(b) where the officer accepts that the officer's performance or attendance has been unsatisfactory or that the officer has been grossly incompetent, any written submission the officer wishes to make in mitigation;

(c) where the officer does not accept that the officer's performance or attendance has been unsatisfactory or that the officer has been grossly incompetent, or where the officer disputes all or part of the matters referred to in the notice given under regulation 31 or 33, a written notice of—

(i) the matters the officer disputes and the officer's account of the relevant events, and

(ii) any arguments on points of law the officer wishes to be considered by the panel.

(3) The officer concerned must provide the appropriate authority and the panel with a copy of any document the officer intends to rely on at the third stage meeting.

(4) Before the end of 3 working days beginning with the first working day after the date on which the officer concerned has complied with paragraph (2), the senior manager and the officer must each give to the other a list of proposed witnesses or give notice to the other that they do not have any proposed witnesses, and any list of proposed witnesses must include brief details of the evidence that each witness is able to adduce.

(5) Where there are proposed witnesses, the officer concerned must, if reasonably practicable, agree a list of proposed witnesses with the senior manager.

(6) Where no list of proposed witnesses is agreed under paragraph (5), the officer concerned must give the appropriate authority the officer's list of proposed witnesses.

## **Witnesses**

**37.**—(1) As soon as reasonably practicable after any list of proposed witnesses has been—

(a) agreed under regulation 36(5), or

(b) given under regulation 36(6),

the appropriate authority must give that list to the panel chair, together with, in the latter case, a list of its proposed witnesses.

(2) The panel chair must—

(a) consider the list or lists of proposed witnesses, and

(b) subject to paragraph (3), determine which, if any, witnesses should attend the third stage meeting.

(3) The panel chair may determine that witnesses not named in any list of proposed witnesses should attend the third stage meeting.

(4) No witness may give evidence at a third stage meeting unless the panel chair reasonably believes that it is necessary in the interests of fairness for the witness to do so, in which case the chair must—

(a) where the witness is a police officer, cause that person to be ordered to attend the third stage meeting, and

- (b) in any other case, cause the witness to be given notice that the witness's attendance is necessary and of the date, time and place of the meeting.

### **Timing and notice of third stage meeting**

**38.**—(1) Subject to paragraphs (2) and (6) and regulation 39, the third stage meeting must take place before the end of 30 working days beginning with the first working day after the day on which a notice has been given to the officer concerned under regulation 31 or 33.

(2) The panel chair may extend the time period specified in paragraph (1) where the panel chair considers that it would be in the interests of fairness to do so.

(3) Where the panel chair extends the time period under paragraph (2), the panel chair must give a written notice of the reasons for so doing to the appropriate authority and the officer concerned.

(4) The panel chair must, if reasonably practicable, agree a date and time for the third stage meeting with the officer concerned.

(5) Where no date and time is agreed, the panel chair must specify a date and time for the third stage meeting.

(6) Where a date and time is specified and—

- (a) the officer concerned or a police friend will not be available at that time, and
- (b) the officer proposes an alternative time which satisfies paragraph (7),

the third stage meeting must be postponed to the time proposed by the officer.

(7) An alternative time must—

- (a) be reasonable, and
- (b) fall before the end of 5 working days beginning with the first working day after the day specified by the panel chair.

(8) The panel chair must give the officer concerned a written notice of the date and time of the third stage meeting determined in accordance with this regulation and of the place of the meeting.

(9) Where the officer concerned informs the panel chair in advance that the officer is unable to attend the third stage meeting on grounds which the panel chair considers reasonable, the panel chair may allow the officer to participate in the meeting by video link or other means.

(10) Where the Director General is entitled to attend the third stage meeting to make representations under regulation 40(2), or to nominate a person to attend the proceedings as an observer under regulation 42(5), the Director General must be given a written notice of the date, time and place of the proceedings.

### **Postponement and adjournment of a third stage meeting**

**39.**—(1) If the panel chair considers it necessary or expedient, the panel chair may direct that the third stage meeting take place at a date and time that is later than that specified in the notice given under regulation 38.

(2) Such direction may specify a date and time which falls after the period of 30 working days referred to in regulation 38(1).

(3) Where the panel chair makes a direction under paragraph (1), the panel chair must give a written notice of the reasons and the revised date, time and place for the meeting to—

- (i) the officer concerned;
- (ii) the other panel members; and
- (iii) the appropriate authority.

### **Participation of Director General and investigator at third stage meeting**

- 40.**—(1) This regulation applies in a case falling within regulation 32 where—
- (a) paragraph 18 or 19 of Schedule 3 to the 2002 Act applied (investigations directed by or by the Director General), or
  - (b) paragraph 16 of that Schedule (investigations by the appropriate authority on its own behalf) applied and—
    - (i) the Director General—
      - (aa) made a recommendation under paragraph 25(4C)(c) of that Schedule (reviews with respect to an investigation) which the appropriate authority accepted;
      - (bb) made a recommendation under paragraph 27(3A) of that Schedule (recommendation of Director General to appropriate authority) which the appropriate authority accepted, or
      - (cc) gave a direction under paragraph 27(4)(a) of that Schedule (direction by Director General where appropriate authority does not take steps to secure that full effect is given to Director General’s recommendation), or
    - (ii) a local policing body made a recommendation under paragraph 25(4E)(c) of that Schedule (reviews with respect to an investigation) which the appropriate authority accepted.
- (2) The Director General may attend the third stage meeting to make representations, and where the Director General does so—
- (a) the Director General may instruct a relevant lawyer to represent the Director General;
  - (b) the Director General must notify the complainant or any interested person before the meeting, and
  - (c) the panel chair must notify the officer concerned before the meeting.
- (3) The investigator or a nominated person must attend the third stage meeting on the request of the panel chair to answer questions.
- (4) For the purpose of this regulation, a “nominated person” is a person who, in the opinion of—
- (a) the appropriate authority, or
  - (b) in a case to which paragraph 18 or 19 of Schedule 3 to the 2002 Act (investigations directed by or by the Director General) applied, the Director General,
- has sufficient knowledge of the investigation of the case to be able to assist the panel.

### **Attendance of complainant or interested person at third stage meeting**

- 41.**—(1) This regulation applies in a case falling within regulation 32 where the third stage meeting arises from—
- (a) a conduct matter or DSI matter under Schedule 3 to the 2002 Act (handling of complaints and conduct matters etc.), or
  - (b) the investigation of a complaint to which paragraph 19A of that Schedule (special procedure where investigation relates to police officer or special constable)(**44**) applied.
- (2) The appropriate authority must give the complainant or any interested person a written notice of the date, time and place of the third stage meeting.
- (3) Subject to this regulation and any conditions imposed under regulation 42(13)—

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(44) Paragraph 19A was substituted for paragraphs 19A to 19E by paragraphs 9 and 21 of Schedule 5 to the 2017 Act.

- (a) the complainant may attend as an observer any part of the third stage meeting relating to the subject matter of the complaint, and
- (b) an interested person may attend as an observer any part of the third stage meeting relating to the subject matter of the complaint or conduct matter in respect of which the person is an interested person.

(4) Subject to paragraph (5) and any conditions imposed under regulation 42(13), a complainant or interested person may be accompanied by one other person, and if the complainant or interested person has a special need, by one further person to accommodate that need.

(5) Where a complainant or interested person, or any accompanying person, is to give evidence as a witness at the third stage meeting, the complainant or interested person and any accompanying person may not be allowed to attend the meeting before giving evidence.

(6) Where the officer concerned objects to the complainant or interested person, or any accompanying person, being present while a submission is made in mitigation on the officer's behalf, the panel chair may require the complainant or interested person, or any accompanying person, to withdraw while the submission is made.

(7) The panel chair may, at the panel chair's discretion, put any questions to the officer concerned that the complainant or interested person may request be put to the officer.

#### **Attendance of others at a third stage meeting**

**42.**—(1) Subject to regulations 40 and 41 and paragraph (10) of this regulation, the third stage meeting must be in private.

(2) A human resources professional and a police officer may attend the meeting to advise the panel on the proceedings.

(3) A relevant lawyer may attend the meeting to advise the panel on the proceedings and on any question of law that may arise at the meeting.

(4) Where the officer concerned is a special constable, the appropriate authority must appoint a special constable with sufficient seniority and experience to act as an adviser to the panel, who must attend the meeting.

(5) A person nominated by the Director General may, as an observer, attend a third stage meeting held under regulation 32 and arising from a case to which—

- (a) paragraph 18 or 19 of Schedule 3 to the 2002 Act (investigations directed by or by the Director General) applied, or
- (b) paragraph 16 of that Schedule (investigations by the appropriate authority on its own behalf) applied and in relation to which—
  - (i) the Director General—
    - (aa) made a recommendation under paragraph 25(4C)(c) of that Schedule (reviews with respect to an investigation) which the appropriate authority accepted;
    - (bb) made a recommendation under paragraph 27(3A) of that Schedule (recommendation of Director General to appropriate authority) which the appropriate authority accepted, or
    - (cc) gave a direction under paragraph 27(4)(a) of that Schedule (direction by Director General where appropriate authority does not take steps to secure that full effect is given to Director General's recommendation), or
  - (ii) a local policing body made a recommendation under paragraph 25(4E)(c) of that Schedule (reviews with respect to an investigation) which the appropriate authority accepted.

(6) In a case where a person nominated by the Director General is entitled to attend the third stage meeting, the appropriate authority must notify the Director General of the date, time and place of the meeting.

(7) Any other person specified in the notice to the officer concerned in accordance with regulation 31(1)(i) or 33(1)(l) may attend the meeting if the officer consents.

(8) Subject to any contrary decision by the panel chair, a witness other than a complainant, interested person or the officer concerned may only attend the third stage meeting for the purposes of giving their evidence.

(9) The panel chair may, at the panel chair's discretion, permit a witness in the third stage meeting to be accompanied at that meeting by one other person.

(10) Where a third stage meeting held under regulation 32 arises from a case to which paragraph 19 of Schedule 3 to the 2002 Act (investigations by the Director General) applied, and the Director General considers that, because of the gravity of the case or other exceptional circumstances, it would be in the public interest to do so, the Director General may, having consulted with—

- (a) the appropriate authority;
- (b) the officer concerned;
- (c) the complainant or interested person;
- (d) any witnesses,

direct that the whole or part of the third stage meeting be in public.

(11) The panel is under a duty to comply with a direction given under paragraph (10).

(12) A direction under paragraph (10), together with the reasons for it, must be notified as soon as practicable, and in any event before the end of 5 working days beginning with the first working day after the decision was taken, to the persons consulted under that paragraph.

(13) The panel chair may impose such conditions as the panel chair sees fit relating to the attendance under regulation 41 or this regulation of persons at the third stage meeting (including circumstances in which they may be excluded) in order to facilitate the proper conduct of the meeting.

### **Exclusion from a third stage meeting**

**43.**—(1) Where it appears to the panel chair that any person may, in giving evidence, disclose information which ought not to be disclosed to any person attending the meeting, other than the officer concerned, because it is information to which paragraph (2) applies, the panel chair must require such attendees to withdraw while the evidence is given.

(2) This paragraph applies to information in so far as the panel chair considers that preventing disclosure of it is—

- (a) necessary for the purpose of preventing the premature or inappropriate disclosure of information that is relevant to, or may be used in, any criminal proceedings;
- (b) necessary in the interests of national security;
- (c) necessary for the purpose of the prevention or detection of crime, or the apprehension or prosecution of offenders;
- (d) necessary for the purposes of the prevention or detection of misconduct by other police officers or police staff members or their apprehension for such matters;
- (e) necessary and proportionate for the protection of the welfare and safety of any informant or witness, or
- (f) otherwise in the public interest.

### **Procedure at a third stage meeting**

**44.**—(1) The panel chair must determine the procedure at the third stage meeting and, in so far as it is set out in these Regulations, must determine it in accordance with these Regulations.

(2) Where the officer concerned is required to attend a third stage meeting under regulation 30, the panel chair must—

- (a) provide the officer with an opportunity to make representations in relation to the matters referred to in the notice given under regulation 31, and
- (b) provide the police friend (if the officer has one) with an opportunity to address the meeting in relation to such matters in accordance with regulation 8(3)(a).

(3) Where the officer concerned is required to attend a third stage meeting under regulation 32, the panel chair must—

- (a) provide the officer concerned with an opportunity to make representations in relation to the matters referred to in the notice given under regulation 33;
- (b) provide the person representing the officer with an opportunity to address the meeting in relation to such matters in accordance with regulation 8(3)(a).

(4) The panel chair may adjourn the meeting to a specified time, or date and time, if it appears to the panel chair necessary or expedient to do so.

(5) A verbatim record of the meeting must be taken and the officer concerned must, on request, be given a copy.

### **Finding**

**45.**—(1) Following the third stage meeting, the panel must make a finding as to whether—

- (a) in a case falling within regulation 30(2), the performance or attendance of the officer concerned during the period specified in accordance with regulation 25(6)(c) has been satisfactory;
- (b) in a case falling within regulation 30(4), the performance or attendance of the officer concerned during any part of the validity period of the final written improvement notice remaining after the expiry of the period specified in accordance with regulation 25(6)(c) has been satisfactory; or
- (c) in a case falling within regulation 32, the performance of the officer concerned constitutes gross incompetence, unsatisfactory performance or neither.

(2) The panel must prepare (or must cause to be prepared) their decision in writing which must state the finding and their reasons, as well as any outcome which they order under regulation 46.

(3) As soon as reasonably practicable and in any event before the end of 3 working days beginning with the first working day after the conclusion of the meeting, the panel chair must give a written copy of the decision to—

- (a) the officer concerned, and
- (b) the line manager.

(4) Where the panel have made a finding of unsatisfactory performance or attendance or gross incompetence, the copy of the decision given to the officer concerned must be accompanied by a written notice setting out the circumstances in which and the time within which a police officer may appeal to a police appeals tribunal under the Police Appeals Tribunals Rules 2020(45).

(5) Any finding or decision of the panel under this regulation or regulation 46 must be based on a simple majority but must not indicate whether it was taken unanimously or by a majority.

## Outcomes

46.—(1) If the panel make a finding that, in a case falling within regulation 30(2) or (4), the performance or attendance of the officer concerned has been unsatisfactory they may, subject to paragraph (4), order—

- (a) one of the outcomes mentioned in paragraph (3)(a), (c) or (f), or
- (b) where the panel are satisfied that there are exceptional circumstances which justify it, the outcome mentioned in paragraph (3)(d).

(2) If the panel make a finding that, in a case falling within regulation 32, the performance of the officer concerned constitutes gross incompetence, they may, subject to paragraph (4), order one of the outcomes mentioned in paragraph (3)(b), (c), (e) or (f).

(3) The outcomes are—

- (a) dismissal of the officer concerned with notice, the period of the notice to be decided by the panel, subject to a minimum period of 28 days;
- (b) dismissal of the officer concerned with immediate effect;
- (c) reduction in rank of the officer concerned with immediate effect;
- (d) an extension of the period of the final written improvement notice issued to the officer concerned;
- (e) the issue to the officer concerned of a final written improvement notice;
- (f) redeployment of the officer concerned to alternative duties (which may involve a reduction of rank) within the police force concerned.

(4) The panel may not order a reduction in rank with immediate effect where—

- (a) the officer is a special constable, or
- (b) the third stage meeting relates to the attendance of the officer.

(5) In considering whether to order any of the outcomes mentioned in paragraph (3), the panel—

- (a) must have regard to the record of police service of the officer concerned as shown on the officer's personal record;
- (b) may receive evidence from any witness whose evidence would, in their opinion, assist their consideration; and
- (c) must give—

- (i) the officer, the officer's police friend or, in a case falling within regulation 32, the officer's relevant lawyer, and
- (ii) the appropriate authority,

an opportunity to make oral or written representations before making a decision.

(6) If the panel make a finding, in a case falling within regulation 32, of unsatisfactory performance, they must order the issue to the officer concerned of a written improvement notice.

(7) A written improvement notice or a final written improvement notice issued under this regulation must—

- (a) state in what respect the performance or attendance of the officer concerned (as the case may be) is considered unsatisfactory or the performance, grossly incompetent;
- (b) state the improvement that is required in performance or attendance;
- (c) state that, if a sufficient improvement is not made within such reasonable period as the panel specifies (being a period not exceeding 12 months), the officer may be required to attend a second stage meeting (in the case of a written improvement notice) or another

- third stage meeting (in the case of a final written improvement notice) and state the date with which this period ends;
- (d) state that it is valid for a period of 12 months beginning with the date of the notice;
  - (e) state that, if the sufficient improvement referred to in sub-paragraph (c) is not maintained during any part of the validity period remaining after the expiry of the period specified in accordance with sub-paragraph (c), the officer may be required to attend a second stage meeting (in the case of a written improvement notice) or another third stage meeting (in the case of a final written improvement notice); and
  - (f) be signed and dated by the panel chair.
- (8) Where the panel orders an extension of the period relating to the final written improvement notice—
- (a) the notice must be amended—
    - (i) to state that if the officer concerned does not make a sufficient improvement within such reasonable period as the panel specifies (being a period not exceeding 12 months) the officer may be required to attend another third stage meeting, and
    - (ii) to state the date with which this period ends;
  - (b) the panel may vary any of the other matters recorded in the notice;
  - (c) the notice is valid for a further period of 12 months.

**Assessment of performance or attendance following third stage meeting where a written improvement notice has been issued**

**47.**—(1) Where a written improvement notice has been issued under regulation 46, the performance or attendance of the officer concerned must be assessed under regulation 22 as if the officer had received a written improvement notice under regulation 18.

(2) Where, as a result of such assessment, the officer concerned is required to attend a second stage meeting, these Regulations have effect as if the officer had been required to attend that meeting under regulation 22 in which case—

- (a) references to the period specified in accordance with regulation 17(6)(c) must be construed as references to the period specified under regulation 46(7)(c), and
- (b) references to the validity period of the written improvement notice must be construed as references to the validity period of the written improvement notice issued under regulation 46.

(3) Where a police officer is required to attend such a second stage meeting, that meeting must concern unsatisfactory performance or attendance which is similar to or connected with the unsatisfactory performance or attendance referred to in the written improvement notice.

**Assessment of performance or attendance following third stage meeting where a final written improvement notice has been issued or extended**

**48.**—(1) Where a final written improvement notice has been issued under regulation 46(6), as soon as reasonably practicable after the end of the period specified by the panel under regulation 46(7)(c) or, where the panel orders an extension of the period, regulation 46(8)(a)—

- (a) the panel must assess the performance or attendance of the officer concerned (as the case may be) during that period, and
- (b) the panel chair must give the officer a written notice as to whether the panel considers that there has been a sufficient improvement in performance or attendance during that period.

(2) If the panel considers that there has not been a sufficient improvement, the panel chair must, at the same time as the panel chair gives a written notice under paragraph (1)(b), also give the officer concerned a written notice that the officer is required to attend another third stage meeting to consider the officer's performance or attendance.

(3) The officer concerned may be required to attend a third stage meeting under paragraph (4) where—

- (a) the officer has not been required to attend a third stage meeting under paragraph (2), or
- (b) the officer has been required to attend a third stage meeting under paragraph (2) but the panel did not make a finding of unsatisfactory performance or attendance at that meeting.

(4) If the panel considers that the officer concerned has failed to maintain a sufficient improvement in performance or attendance during any part of the validity period of the final written improvement notice remaining after the expiry of the period specified in accordance with regulation 46(7)(c) or, where the panel orders and extension of the period, regulation 46(8)(a), the panel chair must give the officer a written notice of the matters set out in paragraph (5).

(5) Those matters are—

- (a) that the panel is of the view mentioned in paragraph (4), and
- (b) that the officer concerned is required to attend another third stage meeting to consider the officer's performance or attendance.

(6) In a case falling within paragraph (2) or (4), the appropriate authority must give the officer concerned the notice referred to in regulation 31.

(7) Where the officer concerned is required to attend a third stage meeting under this regulation, these Regulations have effect as if the case fell within regulation 30(2) or (4), as the case may be.

(8) Where these Regulations have effect in the manner described in paragraph (7)—

- (a) references to the period specified in accordance with regulation 25(6)(c) are to be construed as references to the period specified under regulation 46(7)(c) or (8)(a), as the case may be, and
- (b) references to the validity period of the final written improvement notice are to be construed as references to the validity period mentioned in regulation 46(7)(d) or (8)(c), as the case may be.

(9) Any third stage meeting which a police officer is required to attend under this regulation must concern unsatisfactory performance or attendance which is similar to or connected with the unsatisfactory performance or attendance referred to in the final written improvement notice issued under regulation 46(6) or, if amended under regulation 46(8)(a), as so amended.

(10) References in this regulation to the panel are references to the panel that conducted the initial third stage meeting, subject to paragraph (11).

(11) Where any of the panel members are not able to continue to act as such, the appropriate authority must remove that member from the panel and must appoint a new member to the panel.

(12) If the appropriate authority appoints a new panel member under paragraph (11), it must ensure that the requirements for the composition of the panel in regulation 34 continue to be met.

(13) As soon as reasonably practicable after any such appointment, the appropriate authority must give the officer concerned a written notice of the name of the new panel member.

(14) The officer concerned may object to the appointment of a panel member appointed under paragraph (11).

(15) Any such objection must be made in accordance with regulation 35(2), provided that it must be made before the end of 3 working days beginning with the first working day after receipt of the

notice referred to in paragraph (13); and the appropriate authority must comply with regulation 35(3) to (6) in relation to the objection but paragraph (7) of that regulation does not apply.

### **Third stage meeting under regulation 48**

**49.**—(1) Where an officer is required to attend another third stage meeting under regulation 48—

- (a) that meeting must be conducted by the same panel as conducted the initial third stage meeting (subject to any change in that panel under regulation 48);
- (b) the officer concerned may not object to panel members under regulation 35, except in accordance with regulation 48;
- (c) subject to paragraph (2), regulations 36 to 46 apply to, or in relation to, that meeting.

(2) Following that third stage meeting, the panel may not order an extension of the period of the final written improvement notice issued to the officer concerned.

## **PART 6**

### **Police barred list**

#### **Amendment of the Police Barred List and Police Advisory List Regulations 2017**

**50.** In regulation 7(11)(a) of the Police Barred List and Police Advisory List Regulations 2017<sup>(46)</sup> (removal from barred list on application of barred person: meaning of “gross incompetence” for the purposes of determining the minimum period of a person’s inclusion in the police barred list), for “2012” substitute “2020”.

6th January 2020

*Kit Malthouse*  
Minister of State  
Home Office

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations establish procedures for proceedings in respect of unsatisfactory performance or attendance or gross incompetence of members of police forces of the rank of chief superintendent or below excluding constable probationers

They revoke and replace the Police (Performance) Regulations 2012 (S.I. 2012/2631) (“the 2012 Regulations”), as amended, except in so far as they provide that those Regulations continue to have effect where unsatisfactory performance or attendance or gross incompetence by a police officer came to the attention of the line manager of the officer, or a chief officer of police, before these Regulations come into force or on or after that date if it relates to a matter already being handled under those Regulations. They replace the 2012 Regulations, as amended, with substantially similar provisions but with modifications to reflect changes to the handling of police complaints and police discipline matters made by the Policing and Crime Act 2017 (c. 3) (“the 2017 Act”) and the Police (Conduct) Regulations 2020 (S.I. 2020/4) (“the Conduct Regulations”).

Regulations 12 (meeting following investigation under the 2002 Act) and 13 (provision of information to the Director General) reflect amendments of Schedule 3 to the Police Reform Act 2002 (c. 30) (“the 2002 Act”) made by the 2017 Act. Regulation 14 is a new provision for cases which are referred by the appropriate authority (i.e. the chief officer of police of the police force concerned) under the Conduct Regulations to be dealt with under these Regulations. It applies regulation 12 with modifications to such cases.

Regulation 24 is a new provision which enables the appropriate authority to require a second stage meeting in circumstances where there has not been a first stage meeting. The regulation applies where a matter is referred under the Conduct Regulations to be dealt with under these Regulations and the appropriate authority (a) considers there are reasonable grounds to conclude that the officer concerned has demonstrated a serious inability or failure to perform the duties of the officer’s rank or role to a satisfactory standard such that referral to a second stage meeting is appropriate; and (b) having consulted, is satisfied that the officer concerned has been given a reasonable opportunity to address the issue but has failed to make a sufficient improvement.

Regulations 32 and 33 also reflect amendments of Schedule 3 to the 2002 Act made by the 2017 Act and relate to cases where a third stage meeting may be required without a first or second stage meeting having been held.

Regulation 50 makes a consequential amendment to a provision in the Police Barred List and Police Advisory List Regulations 2017 (S.I. 2017/1135) relating to an application by a person to be removed from the police barred list under those Regulations.

There are further minor differences between these Regulations and the 2012 Regulations to reflect the changes made by the 2017 Act and the Conduct Regulations.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.