Draft Regulations laid before Parliament under section 84(9) of the Police Act 1996, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2008 No.

POLICE, ENGLAND AND WALES

The Police (Performance) Regulations 2008

Made - - - -	*2008*
Coming into force - -	*1st December 2008*

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 50, 51 and 84 of the Police Act (**1**).

In accordance with section 63(3)(**2**) of that Act, she has supplied the Police Advisory Board for England and Wales with a draft of these Regulations and has taken into consideration the representations of that Board.

In accordance with section 84(9)(**3**) of that Act, a draft of these Regulations was laid before Parliament and approved by a resolution of each House of Parliament.

PART 1

Preliminary

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Police (Performance) Regulations 2008 and shall come into force on 1st December 2008.

(2) These Regulations extend to England and Wales.

(**1**) 1996 c.16. Section 50 was amended by paragraph 95 of Schedule 27 to the Greater London Authority Act 1999 (c.29) and section 125 of the Criminal Justice and Police Act 2001 (c.16). It is also amended by paragraph 3 of Schedule 22 to the Criminal Justice and Immigration Act 2008 (c.4). Section 51 was amended by section 128 of the Police Act 1997 (c.50) and section 35 of the Police Reform Act 2002 (c.30). It is also amended by paragraph 4 of Schedule 22 to the Criminal Justice and Immigration Act 2008. Section 84 was amended by section 125 of the Criminal Justice and Police Act 2001 and paragraph 119 of Schedule 21 to the Legal Services Act 2007 (c.29). It is also amended by paragraph 7 of Schedule 22 to the Criminal Justice and Immigration Act 2008.

(**2**) Relevant amendments to section 63 were made by paragraph 78 of Schedule 4 to the Serious Organised Crime and Police Act 2005 (c. 15). Section 63 is also amended by paragraph 6 of Schedule 22 to the Criminal Justice and Immigration Act 2008.

(**3**) Section 84(9) is inserted by paragraph 7 of Schedule 22 to the Criminal Justice and Immigration Axt 2008.

Application

2. These Regulations shall 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 his period of probation.

Revocation and transitional provisions

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

(a) the Police (Efficiency) Regulations 1999(**4**);

(b) the Police (Efficiency) (Amendment) Regulations 2003(**5**); and

(c) the Police (Efficiency) (Amendment No.2) Regulations 2003(**6**).

(2) Where unsatisfactory performance or attendance by a police officer came to the attention of the line manager for such officer before 1st December 2008, nothing in these Regulations shall apply and the Regulations mentioned in paragraph (1) shall continue to have effect.

Interpretation and delegation

4.—(1) In these Regulations—

"the 1996 Act" means the Police Act 1996;

"the Police Regulations" means the Police Regulations 2003(**7**);

"appropriate authority" means the chief officer of police of the police force concerned;

"bank holiday" means a day which is a bank holiday under the Banking and Financial Dealings Act 1971(**8**) in England and Wales;

"document" means anything in which information of any description is recorded and includes any recording of a visual image or images;

"first stage appeal meeting" has the meaning assigned to it by regulation 16;

"first stage meeting" has the meaning assigned to it by regulation 12;

"gross incompetence" and cognate expressions mean a serious inability or serious failure of a police officer to perform the duties of his rank or the role he is currently undertaking to a satisfactory standard or level, to the extent that dismissal would be justified, except that no account shall be taken of the attendance of a police officer when considering whether he has been grossly incompetent;

"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 party" means a person whose appointment could reasonably give rise to a concern as to whether he could act impartially under these Regulations;

"line manager" means the police officer or the police staff member who, in either case, has immediate supervisory responsibility for the officer concerned;

"nominated person" means a person appointed by the senior manager in accordance with regulation 9;

(**4**) S.I. 1999/732.
(**5**) S.I. 2003/528.
(**6**) S.I. 2003/2600.
(**7**) S.I. 2003/527. The relevant amending instrument is S.I. 2006/3449.
(**8**) 1971 c.80.

"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 30 subject to any change to the membership of that panel in accordance with regulation 31 and to the provisions of regulations 40 and 41;

"panel chair" means the chair of the panel;

"police force concerned" means—

(a) where the officer concerned is a member of a police force, the police force of which he is a member; and

(b) where the officer concerned is a special constable, the police force maintained for the police area for which he is appointed;

"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 an employee of a police authority who is under the direction and control of a chief officer of police;

"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, subject to the provisions of paragraph 35 of Schedule 27 to the Criminal Justice and Immigration Act 2008;

"relevant terms of the final written improvement notice" has the meaning assigned to it by regulation 23;

"relevant terms of the written improvement notice" has the meaning assigned to it by regulation 16;

"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 assigned to it by regulation 23;

"second stage meeting" has the meaning assigned to it by regulation 19;

"senior manager" means—

(c) the police officer or police staff member who is for the time being the supervisor of the person who is, in relation to the officer concerned, the second line manager; or

(d) 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 rank (or equivalent) as the person who is, in relation to the officer concerned, the second line manager;

"senior officer" means a member of a police force holding a rank above that of chief superintendent;

"staff association" means—

(e) 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

(f) in relation to a member of a police force of the rank of superintendent or chief superintendent, the Police Superintendents' Association of England and Wales;

"third stage meeting" has the meaning assigned to it by regulations 26 and 28;

"unsatisfactory performance procedures" means the procedures set out in these Regulations;

"validity period" has the meaning assigned to it by regulations 15(4), 22(4), 38(6)(d) and (7)(c); and

"working day" means any day other than a Saturday or a Sunday or a day which is a bank holiday or a public holiday in England and Wales.

(2) In these Regulations—

(a) references to—

(i) unsatisfactory performance or attendance;

(ii) the performance or attendance of an officer being unsatisfactory,

mean an inability or failure of a police officer to perform the duties of the role or rank he 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) The appropriate authority may, subject to paragraph (4), delegate any of its functions under these Regulations to—

(a) a member of a police force of at least the rank of chief 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 a chief inspector.

(4) Where the appropriate authority delegates its functions under regulation 28, the decisions shall be authorised by a senior officer.

(5) Any proceedings under these Regulations are disciplinary proceedings for the purposes of section 87 of the 1996 Act (guidance concerning disciplinary proceedings)(**9**).

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 his staff association,

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

(2) A police friend may—

(a) advise the officer concerned throughout the proceedings under these Regulations;

(**9**) Section 87 was amended by paragraph 18 of Schedule 7 to the Police Reform Act 2002. It is also amended by paragraph 9 of Schedule 22 to the Criminal Justice and Immigration Act 2008.

(b) unless the officer concerned has the right to be legally represented under regulation 6 and chooses to be so represented, represent the officer concerned at a meeting under these Regulations;

(c) make representations to the appropriate authority concerning any aspect of the proceedings under these Regulations; and

(d) accompany the officer concerned to any meeting which the officer concerned is required to attend under these Regulations.

(3) Where a 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 shall permit him 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 shall include 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 representation

6.—(1) Where a police officer is required to attend a third stage meeting under regulation 28, he has the right to be legally represented at such meeting by a relevant lawyer of his choice.

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

(a) such meeting may take place and he may be dismissed or receive any other outcome under regulation 38(2) or (5) without his being legally represented; and

(b) the panel conducting such meeting may nevertheless be advised by a relevant lawyer at the meeting in accordance with regulation 36(4).

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

(4) A third stage meeting under regulation 28 shall 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 or supplied to the officer concerned under these Regulations, it shall be—

(a) given to him in person; or

(b) left with some person at, or sent by recorded delivery to, his last known address.

Procedure at meetings under these Regulations

8.—(1) Where the officer concerned does not attend a meeting under these Regulations or where the officer concerned participates in a third stage meeting by video link or other means under regulation 34(9), he may nonetheless be represented at that meeting by his–

(a) police friend; or

(b) where the officer is required to attend the third stage meeting under regulation 28, his relevant lawyer.

(2) Where the officer concerned does not attend a meeting under these Regulations or participate in a third stage meeting by video link or other means under regulation 34(9), the meeting may be proceeded with and concluded in the absence of the officer concerned whether or not he is so represented.