STATUTORY RULES OF NORTHERN IRELAND

2016 No. 42

POLICE

The Police (Performance and Attendance) Regulations (Northern Ireland) 2016

Made - - - - 17th February 2016

Coming into operation 1st June 2016

The Department of Justice makes the following Regulations in exercise of the powers conferred by sections 25 and 26 of the Police (Northern Ireland) Act 1998(**1**).

In accordance with sections 25(8) and 26(6) of that Act the Department has consulted the Northern Ireland Policing Board and the Police Association.

PART 1

Preliminary

Citation and commencement

1. These Regulations may be cited as the Police (Performance and Attendance) Regulations (Northern Ireland) 2016 and shall come into operation on 1st June 2016.

Revocation and transitional provisions

2.—(1) — Subject to paragraph (2), the Police (Unsatisfactory Performance and Attendance) Regulations (Northern Ireland) 2010(**2**) are revoked.

(2) Where formal unsatisfactory performance or attendance procedures have been commenced for the member before 1st June 2016 nothing in these Regulations shall apply and the Regulations mentioned in paragraph (1) shall continue to have effect.

Application

3. These Regulations shall not apply in relation to—

(**1**) 1998 c.32. Relevant amendments are made by section 78(1) of and paragraph 23 of Schedule 6 to the Police (Northern Ireland) Act 2000.
(**2**) S.R. 2010 No. 47.

(a) a member above the rank of Chief Superintendent;

(b) members of the rank of constable who have not yet completed their period of probation.

Interpretation and delegation

4.—(1) The Interpretation Act (Northern Ireland) 1954(**3**) applies to these Regulations as it applies to an Act of the Assembly. In these Regulations—

"the 1996 Act" means the Police Act 1996(**4**);

"the 1998 Act" means the Police (Northern Ireland) Act 1998;

"the 2000 Act" means the Police (Northern Ireland) Act 2000(**5**);

"the Police Regulations" means the Police Service of Northern Ireland Regulations 2005(**6**);

"appropriate authority" means the Chief Constable;

"bank holiday" means a day which is a bank holiday under the Banking and Financial Dealings Act 1971(**7**) in Northern Ireland;

"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" means a serious inability or serious failure of a member 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 member when considering whether he has been grossly incompetent;

"human resources professional" means a person employed under section 4 of the 2000 Act or a member who, in either case, has responsibility for personnel matters relating to members;

"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 a member having supervisory or managerial responsibility for the member concerned;

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

"member" means a member of the police service;

"member concerned" means the member 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 41 and 42;

"panel chair" means the chair of the panel;

"police force" means the police service, a police force within the meaning of section 101 of the 1996 Act(**8**), or the Police Service of Scotland, within the meaning of section 6 of the Police and Fire Reform (Scotland) Act 2012(**9**);

(**3**) 1954 c.33 (N.I.).
(**4**) 1996 c.16.
(**5**) 2000 c.32.
(**6**) S.R. 2005 No. 547 to which there are amendments not relevant to these Regulations.
(**7**) 1971 c.80.
(**8**) 1996 c.16.
(**9**) 2012 asp 8.

"police friend" means a person chosen by the member concerned in accordance with regulation 5;

"police officer" means a member of a police force;

"the police service" means the Police Service of Northern Ireland or the Police Service of Northern Ireland Reserve;

"police support staff" has the same meaning as in section 4(6) of the 2000 Act;

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

"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 member concerned and who is either—

(a) a member of the police service having supervisory or managerial responsibility for the line manager and who is senior in rank to the line manager, or

(b) a police support staff member who has 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—

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

(b) in the absence of such supervisor, the member or police support 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 rank above the person who is, in relation to the member concerned, the second line manager;

"senior officer" means a member above the rank of chief superintendent;

"staff association" means—

(a) in relation to a member of the rank of chief inspector or below, the Police Federation for Northern Ireland; and

(b) in relation to a member of the rank of superintendent or chief superintendent, the Police Superintendents' Association for Northern Ireland;

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

"unsatisfactory attendance" means a level of absence which the Chief Constable has determined is unacceptable or unsustainable;

"unsatisfactory performance" means an inability or failure of a member to perform the duties of the role or rank he is currently undertaking to a satisfactory standard or level;

"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), 39(7)(d) and 39(8)(c); and

"working day" means any day other than a Saturday or Sunday or a day which is a bank holiday or a public holiday in Northern Ireland.

(2) In these Regulations—

(a) "unsatisfactory performance or attendance" may be construed as a reference to either unsatisfactory performance or unsatisfactory attendance or both;

(b) "performance or attendance" may be construed as a reference to performance or attendance or both.

(3) The appropriate authority may, subject to paragraph (4), delegate any of its functions under these Regulations to—

(a) a member of at least the rank of chief inspector; or

(b) a member of police support staff 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.

PART 2

General

Police friend

5.—(1) The member concerned may choose a police officer who is not otherwise involved in the matter, to act as his police friend.

(2) A police friend may—

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

(b) unless the member concerned has the right to be legally represented and chooses to be so represented, represent the member 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 member concerned to any meeting which the member concerned is required to attend under these Regulations.

(3) The Chief Constable shall permit a police friend who is a member of the police service to use a reasonable amount of duty time for the purposes referred to in paragraph (2).

Legal representation

6.—(1) Where a member is required to attend a third stage meeting, he has the right to be legally represented at such meeting by counsel or a solicitor of his choice.

(2) If such a member chooses not to be legally represented—

(a) such meeting may take place and he may be dismissed or receive any other outcome under regulation 39(2) or (6) without his being legally represented; and

(b) the panel conducting such meeting may nevertheless be advised by counsel or a solicitor at the meeting in accordance with regulation 37(4).

(3) Except in a case where the member 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 member concerned has been notified in writing of the effect of this regulation.

Service of notices or documents

7.—(1) Subject to paragraph (2), any written notice or document to be given or supplied to the member concerned under these Regulations shall be given to him in person.

(2) Where the appropriate authority reasonably believes that the member concerned is avoiding service the written notice or document shall be 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 member concerned does not attend a meeting under these Regulations or where the member concerned participates in a third stage meeting by video link or other means under regulation 34(7), he may nonetheless be represented at that meeting by his—

(a) police friend; or

(b) where the member is required to attend the third stage meeting under regulation 27 or 28, his counsel or a solicitor.

(2) Where the member 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(7), the meeting may be proceeded with and concluded in the absence of the member concerned whether or not he is so represented.

(3) During any meeting under these Regulations, the person representing the member concerned may—

(a) address the meeting in order to do any or all of the following–

(i) put the case of the member concerned;

(ii) sum up that case;

(iii) respond on behalf of the member concerned 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 member concerned.

(4) Where the person representing the member concerned is counsel or a solicitor, the police friend of the member concerned may also confer with the member concerned.

(5) Where the member concerned is participating in a third stage meeting by video link or other means in accordance with regulation 34(7), the person representing the member or (if different) his police friend (or both) may also participate in the third stage meeting by such means together with the member concerned.

(6) The police friend, or counsel or solicitor of the member concerned may not answer any questions asked of the member concerned during a meeting.

(7) Whether any question should or should not be put to a witness at a third stage meeting shall be determined by the panel chair.

(8) At any meeting under these Regulations, the person or the panel conducting the meeting shall not make a finding of unsatisfactory performance or attendance or gross incompetence unless—

(a) he is or they are satisfied on the balance of probabilities that there has been unsatisfactory performance or attendance or gross incompetence; or

(b) the member concerned consents to such a finding.