
STATUTORY INSTRUMENTS

2017 No. 521

**The Gangmasters and Labour Abuse Authority
(Complaints and Misconduct) Regulations 2017**

PART 3

HANDLING OF COMPLAINTS

Duties to preserve evidence relating to complaints

17.—(1) Where—

(a) a complaint is made to the Chief Executive; or

(b) the Chief Executive becomes aware that a complaint has been made to the Commission, the Chief Executive must take all such steps as appear to be appropriate for the purposes of these Regulations for obtaining and preserving evidence relating to the conduct complained of.

(2) The Chief Executive's duty under paragraph (1) must be performed as soon as practicable after the complaint is made or, as the case may be, the Chief Executive becomes aware of it.

(3) After that, the Chief Executive must, until satisfied that it is no longer necessary to do so, continue to take the steps which from time to time appear to the Chief Executive to be appropriate for the purposes of these Regulations for obtaining and preserving evidence relating to the conduct complained of.

(4) The Chief Executive must take all such specific steps for obtaining or preserving evidence relating to any conduct that is the subject matter of a complaint as the Chief Executive may be directed to take for the purposes of this regulation by the Commission.

Initial handling and recording of complaints

18.—(1) Where a complaint is made to the Commission, it must give notification of the complaint to the Chief Executive.

(2) But the Commission need not give that notification if the Commission considers that there are exceptional circumstances that justify it not being given.

(3) Where the Commission gives notification of a complaint under paragraph (1), the Commission must notify the complainant that the notification has been given and of what it contained.

(4) Where—

(a) a complaint is notified to the Chief Executive under paragraph (1); or

(b) a complaint is made to the Chief Executive,

the Chief Executive must record the complaint.

Copies of complaints etc.

19.—(1) The Chief Executive must, after recording a complaint under regulation 18(4)—

- (a) supply to the complainant a copy of the record made of that complaint; and
- (b) subject to paragraphs (2) to (4), supply to the person complained against a copy of the complaint.

(2) A copy of a complaint supplied under this regulation may be in a form which keeps anonymous the identity of the complainant or of any other person.

(3) The Chief Executive may decide not to supply such a copy of a complaint if the Chief Executive is of the opinion that to do so—

- (a) might prejudice any criminal investigation or proceedings; or
- (b) would otherwise be contrary to the public interest.

(4) Where the Chief Executive decides not to supply such a copy, the Chief Executive must keep that decision under regular review.

Failure to record a complaint

20.—(1) This regulation applies where anything which is or purports to be a complaint in relation to which regulation 18 (initial handling and recording of complaints) has effect is received by the Chief Executive (whether in consequence of having been made directly or of a notification under that regulation).

(2) If the Chief Executive decides not to record the whole or any part of what has been received, the Chief Executive must notify the complainant of the following matters—

- (a) the decision not to record the whole or part of what was received;
- (b) if the decision relates to part of what was received, the part in question;
- (c) the grounds on which the decision was made; and
- (d) that complainant’s right to appeal against the decision under this regulation.

(3) The complainant may appeal to the Commission against any such decision.

(4) In a case where the Chief Executive decides not to record any of what was received, on an appeal under this regulation, the Commission must—

- (a) determine whether the Chief Executive should have recorded all or some of what was received; and
- (b) if the Commission finds in the complainant’s favour, direct that the Chief Executive record all or some of what was received.

(5) In a case where the Chief Executive decides not to record part of what was received, on an appeal under this regulation, the Commission must—

- (a) determine whether the Chief Executive should have recorded some or all of that part; and
- (b) if the Commission finds in the complainant’s favour, direct that the Chief Executive record all or some of that part.

(6) The Chief Executive must comply with any direction given under this regulation.

(7) The Commission must—

- (a) give notification to the Chief Executive and the complainant of any determination made by it under this regulation; and
- (b) give notification to the complainant of any direction given by it under this regulation to the Chief Executive.

Reference of complaints to the Commission

21.—(1) The Chief Executive must refer a complaint to the Commission if—

- (a) the complaint is one alleging that the conduct complained of has resulted in death or serious injury;
 - (b) the complaint does not fall within sub-paragraph (a) but is one alleging conduct which constitutes—
 - (i) a serious assault, as defined in guidance issued by the Commission;
 - (ii) a serious sexual offence, as defined in guidance issued by the Commission;
 - (iii) serious corruption, as defined in guidance issued by the Commission;
 - (iv) a criminal offence or behaviour which is liable to lead to disciplinary proceedings and which, in either case, was aggravated by discriminatory behaviour on the grounds of a person's race, sex, religion, or other status identified in guidance issued by the Commission;
 - (v) a relevant offence;
 - (c) the complaint arises from the same incident as one in which any conduct falling within sub-paragraph (a) or (b) is alleged;
 - (d) the Commission notifies the Chief Executive that it requires the complaint to be referred to it for its consideration.
- (2) In a case where there is no obligation under paragraph (1) to make a reference, the Chief Executive may refer a complaint to the Commission if the Chief Executive considers that it would be appropriate to do so by reason of—
- (a) the gravity of the subject matter of the complaint; or
 - (b) any exceptional circumstances.
- (3) Where a complaint is required to be referred to the Commission under paragraph (1)(a), (b) or (c), notification of the complaint must be given to the Commission—
- (a) without delay and in any event not later than the end of the day following the day on which it first becomes clear to the Chief Executive that the complaint is one to which that paragraph applies; and
 - (b) in such manner as the Commission specifies.
- (4) Where a complaint is required to be referred to the Commission under paragraph (1)(d), notification of the complaint must be given to the Commission—
- (a) without delay and in any event not later than the end of the day following the day on which the Commission notifies the Chief Executive that the complaint is to be referred; and
 - (b) in such manner as the Commission specifies.
- (5) Subject to paragraph (7)—
- (a) the power of the Commission by virtue of paragraph (1)(d) to require a complaint to be referred to it; and
 - (b) the power of the Chief Executive to refer a complaint to the Commission under paragraph (2),
- are each exercisable at any time irrespective of whether the complaint is already being investigated by any person or has already been considered by the Commission.
- (6) Where the Chief Executive refers a complaint to the Commission under this regulation the Chief Executive must give a notification of the making of the reference—
- (a) to the complainant; and
 - (b) except in a case where it appears to the Chief Executive that to do so might prejudice a possible future investigation of the complaint, to the person complained against.

(7) A complaint that has already been referred to the Commission under this regulation on a previous occasion—

- (a) is not required to be referred again under paragraph (1), unless the Commission so directs; and
- (b) may only be referred in exercise of the power at paragraph (2) if the Commission consents.

Duties of the Commission on references under regulation 21

22.—(1) The Commission must, in the case of every complaint referred to it by the Chief Executive, determine whether or not it is necessary for the complaint to be investigated.

(2) Where the Commission determines under this regulation that it is not necessary for a complaint to be investigated, it may, if it thinks fit, refer the complaint back to the Chief Executive to be dealt with by the Chief Executive in accordance with regulation 23.

(3) Where the Commission refers a complaint back under paragraph (2), it must give a notification of the making of the reference back—

- (a) to the complainant; and
- (b) except in a case where it appears to the Commission that to do so might prejudice a possible future investigation of the complaint, to the person complained against.

Handling of complaints by the Chief Executive

23.—(1) This regulation applies where a complaint has been recorded by the Chief Executive.

(2) But this regulation does not apply to a complaint if it is one that has been, or must be, referred to the Commission under regulation 21, unless the complaint is for the time being—

- (a) referred back to the Chief Executive under regulation 22; or
- (b) the subject of a determination under regulation 38 (power of the Commission to determine the form of an investigation).

(3) Section 24 was amended by paragraph 12 of Schedule 4 to the Police and Justice Act 2006 (c. 48), paragraph 289 of Schedule 16 to the Police Reform and Social Responsibility Act 2011 (c. 13) and paragraphs 6 and 7 of Schedule 14 to the Policing and Crime Act 2017 (c. 3).

(4) If the Chief Executive determines that the complaint is suitable for being subjected to local resolution, the Chief Executive must make arrangements for it to be so subjected

(5) If the Chief Executive determines that the complaint is not so suitable, the Chief Executive must make arrangements for the complaint to be investigated by the Chief Executive.

(6) A determination that a complaint is suitable for being subjected to local resolution may not be made unless the Chief Executive is satisfied that—

- (a) the conduct complained of (even if it were proved) would not justify the bringing of any criminal or disciplinary proceedings against the person whose conduct is complained of; and
- (b) the conduct complained of (even if it were proved) would not involve the infringement of a person's rights under Article 2 or 3 of the Convention (within the meaning of the Human Rights Act 1998(1)).

(7) In a case where this regulation applies to a complaint by virtue of paragraph (2)(b), a determination that the complaint is suitable for being subjected to local resolution may not be made unless the Commission approves the determination.

(1) 1998 c. 42.

(8) No more than one application may be made to the Commission for the purposes of paragraph (7) in respect of the same complaint.

(9) Paragraph (7) (where applicable) is in addition to paragraph (6).

Disapplication of the requirements of these Regulations

24.—(1) If, in a case in which regulation 23 applies, the Chief Executive considers—

(a) that the complaint should be handled otherwise than in accordance with these Regulations or that no action should be taken in relation to it; and

(b) that the complaint falls within the description of complaints specified in paragraph (7),

the Chief Executive may handle the complaint in whatever manner (if any) that the Chief Executive thinks fit.

(2) But, in a case where regulation 23 applies by virtue of regulation 23(2)(a) or (b), the Chief Executive may not handle the complaint in whatever manner (if any) the Chief Executive thinks fit unless—

(a) the Chief Executive applies to the Commission, in accordance with these Regulations, for permission to so handle the complaint; and

(b) the Commission gives permission.

(3) An application under paragraph (2) must be in writing and must be accompanied by—

(a) a copy of the complaint;

(b) an explanation of the Chief Executive's reasons for making the application; and

(c) copies of any other documents or material in the Chief Executive's possession which are relevant to the complaint.

(4) The Chief Executive must supply any further information requested by the Commission for the purpose of considering an application made under paragraph (2).

(5) Where such an application is made to the Commission, it must—

(a) consider the application and determine whether to grant the permission applied for; and

(b) notify its decision to the Chief Executive and the complainant.

(6) Where an application is made under paragraph (2) in respect of any complaint, the Chief Executive must not, while the application is being considered by the Commission, take any action in accordance with the provisions of these Regulations (other than under regulation 17 (duties to preserve evidence relating to complaints)) in relation to that complaint.

(7) For the purposes of paragraph (1)(b), the description of complaints specified are those in relation to which the Chief Executive considers that—

(a) more than 12 months have elapsed between the incident, or the latest incident, giving rise to the complaint and the making of the complaint and either that no good reason for the delay has been shown or that injustice would be likely to be caused by the delay;

(b) the matter is already the subject of a complaint made by or on behalf of the same complainant;

(c) the complaint discloses neither the name and address of the complainant nor that of any other interested person and it is not reasonably practicable to ascertain such a name and address;

(d) the complaint is vexatious, oppressive or otherwise an abuse of the procedures for dealing with complaints;

(e) the complaint is repetitious; or

- (f) it is not reasonably practicable to complete the investigation of the complaint or any other procedures under these Regulations.
- (8) For the purposes of paragraph (7)(e), a complaint is repetitive if, and only if—
- (a) it concerns substantially the same conduct as a previous conduct matter or it is substantially the same as a previous complaint made by or on behalf of the same complainant;
 - (b) it contains no fresh allegations which significantly affect the account of the conduct complained of;
 - (c) no fresh evidence, being evidence which was not reasonably available at the time the previous complaint was made, is provided in support of it;
 - (d) as respects the previous complaint or conduct matter, either—
 - (i) the complaint was resolved by local resolution in accordance with regulation 26;
 - (ii) the complaint was handled otherwise than in accordance with these Regulations or no action was taken in relation to it, in accordance with this regulation and regulation 25;
 - (iii) the Commission gave the Chief Executive a direction under regulation 65 (power to discontinue an investigation);
 - (iv) the Chief Executive disapplied the requirements of these Regulations in accordance with regulation 66(8)(b);
 - (v) the complainant gave such notification as is mentioned in regulation 40(1) (withdrawn complaints); or
 - (vi) the requirements of regulation 69(9) or 70(11) (determination by the Chief Executive of what action to take) were complied with.
- (9) For the purposes of paragraph (7)(f), it is not reasonably practicable to complete the investigation of a complaint or any other procedures under these Regulations if, and only if—
- (a) it is not reasonably practicable to communicate with the complainant or a person acting on the complainant's behalf; or
 - (b) it is not reasonably practicable to complete a satisfactory investigation in consequence of—
 - (i) a refusal or failure, on the part of the complainant, to make a statement or afford other reasonable assistance for the purposes of the investigation; or
 - (ii) the lapse of time since the event or events forming the subject matter of the complaint.
- (10) In this regulation any reference to action not being reasonably practicable includes a reference to action which it does not appear reasonably practicable to take within a period which is reasonable in all the circumstances of the case.

Disapplication of the requirements of these Regulations: notifications, appeals etc.

25.—(1) Before deciding to handle a complaint in whatever manner (if any) the Chief Executive thinks fit in accordance with regulation 24(1), the Chief Executive must—

- (a) write to the complainant at the complainant's last known address—
 - (i) inviting the complainant to make representations in relation to the matter; and
 - (ii) allowing the complainant a period of 28 days, commencing on the day after the date of the letter, to do so; and
 - (b) have regard to any representations made by the complainant.
- (2) The Chief Executive must notify the complainant—

- (a) that the Chief Executive has decided to handle the complaint as permitted by regulation 24(1) (in a case where the Chief Executive is not required to apply for permission under regulation 24(2) to so handle the complaint);
 - (b) about the making of the application under regulation 24(2) (in a case where the Chief Executive makes such an application).
- (3) Where the complaint is to be handled in whatever manner (if any) the Chief Executive thinks fit (whether or not the Commission's permission is needed), the Chief Executive—
- (a) is not required by virtue of any of the provisions of these Regulations (other than regulation 17) to take any action in relation to the complaint; and
 - (b) may handle the complaint in whatever manner the Chief Executive thinks fit, or take no action in relation to the complaint, and for the purposes of handling the complaint may take any step that the Chief Executive could have taken, or would have been required to take, if the Chief Executive were not proceeding in accordance with regulation 24.
- (4) Where the Chief Executive applies to the Commission under regulation 24(2) and the Commission determines that permission should not be granted—
- (a) the Commission must refer the matter back to the Chief Executive for the making of a determination under regulation 23(3); and
 - (b) the Chief Executive must then make that determination.
- (5) No more than one application may be made to the Commission under regulation 24(2) in respect of the same complaint.
- (6) The complainant may appeal to the Commission against any decision by the Chief Executive under regulation 24 to handle the complaint otherwise than in accordance with these Regulations or to take no action in relation to it.
- (7) But the complainant may not appeal in a case in which the appeal relates to a decision for which the Commission has given permission under regulation 24.
- (8) On an appeal under this paragraph, the Commission must—
- (a) determine whether any decision taken by the Chief Executive under regulation 24 should have been taken in the case in question; and
 - (b) if the Commission finds in the complainant's favour, give such directions as the Commission thinks appropriate to the Chief Executive as to the action to be taken for handling the complaint in accordance with these Regulations or handling it otherwise than in accordance with these Regulations,
- and the Chief Executive must comply with any directions given under sub-paragraph (b).

Local resolution of complaints

26.—(1) The arrangements made by the Chief Executive for subjecting any complaint to local resolution may include the appointment of a person who is an officer of the Authority to secure the local resolution of the complaint.

(2) The procedures that are to be available for dealing with a complaint which is to be subjected to local resolution are, subject to the provisions of this regulation, any procedures which are approved by the Commission.

(3) Where it appears to the appointed person that the complaint had in fact already been satisfactorily dealt with at the time it was brought to the appointed person's notice, the appointed person may, subject to any representation by the complainant, treat it as having been locally resolved.

(4) The appointed person must as soon as practicable give the complainant and the person complained against an opportunity to comment on the complaint.

(5) The appointed person must not, for the purpose of locally resolving a complaint, tender on behalf of the person complained against an apology for that person's conduct unless the person complained against has agreed to the apology.

(6) Where a complaint has been dealt with by way of local resolution, a record must be made as soon as practicable of the outcome of the procedure and a copy of the record sent to the complainant and the person complained against.

(7) At the time of sending a copy of the record of outcome to the complainant under paragraph (6), the Chief Executive must notify the complainant in writing of the complainant's right of appeal against that outcome under regulation 27 (appeals relating to complaints dealt with other than by investigation).

(8) In this regulation, "the appointed person" means a person appointed under paragraph (1) to secure the local resolution of a complaint.

(9) A statement made by any person for the purposes of the local resolution of any complaint is not admissible in any subsequent criminal, civil or disciplinary proceedings except to the extent that it consists of an admission relating to a matter that has not been subjected to local resolution.

(10) If, after attempts have been made to resolve a complaint using local resolution, it appears to the Chief Executive—

- (a) that the resolution of the complaint in that manner is impossible; or
- (b) that the complaint is, for any other reason, not suitable for such resolution,

the Chief Executive must make arrangements for the complaint to be investigated by the Chief Executive.

(11) The local resolution of any complaint must be discontinued if—

- (a) any arrangements are made under paragraph (10);
- (b) the Commission notifies the Chief Executive that it requires the complaint to be referred to the Commission under regulation 21;
- (c) the complaint is so referred otherwise than in pursuance of such a notification.

(12) A person who has participated in any attempt to resolve a complaint using local resolution is disqualified for appointment under any provision of these Regulations to investigate that complaint, or to assist with the carrying out of the investigation of that complaint.

Appeals relating to complaints dealt with other than by investigation

27.—(1) The complainant may appeal to the Commission against the outcome of any complaint that is—

- (a) subjected to local resolution; or
- (b) handled otherwise than in accordance with these Regulations.

(2) On an appeal under this regulation, the Commission must—

- (a) determine whether the outcome of the complaint is a proper outcome; and
- (b) if the Commission finds in the complainant's favour, give such directions as the Commission thinks appropriate to the Chief Executive as to the action to be taken in relation to the complaint,

and the Chief Executive must comply with any directions given under paragraph (b).