
STATUTORY INSTRUMENTS

2009 No. 2133

The UK Border Agency (Complaints and Misconduct) Regulations 2009

PART 6

PROVISION OF INFORMATION

Provision and use of information by the IPCC

47.—(1) Where the IPCC, or any person acting on its behalf, obtains information in the course of performing a function conferred on it by regulation 6(1) they must not disclose it except as permitted by Part 6 (provision of information) of these Regulations.

(2) Where the IPCC, or any person acting on its behalf, obtains information in the course of performing a function conferred on it by regulation 6(1) they may not use it for any purpose other than the performance of a function under these Regulations.

Provision of information to the IPCC

48.—(1) It shall also be the duty of the relevant appropriate authority—

- (a) to provide the IPCC with all such other information and documents specified or described in a notification given by the IPCC to the relevant appropriate authority, and
- (b) to produce or deliver up to the IPCC all such evidence and other things so specified or described,

as appear to the IPCC to be required by it for the purposes of the carrying out of any of its functions.

(2) Anything falling to be provided, produced or delivered up by any person in pursuance of a requirement imposed under paragraph (1) must be provided, produced or delivered up in such form, in such manner and within such period as may be specified in—

- (a) the notification imposing the requirement; or
- (b) in any subsequent notification given by the IPCC to that person for the purposes of this paragraph.

(3) Nothing in this regulation shall require the relevant appropriate authority to provide the IPCC with any information or document, or to produce or deliver up any other thing, before the earliest time at which it is practicable for it to do so.

Duty to keep the complainant informed

49.—(1) In any case in which there is an investigation of a complaint in accordance with the provisions of these Regulations—

- (a) by the IPCC, or
- (b) under its management,

it shall be the duty of the IPCC to provide the complainant with all such information as will keep the complainant properly informed, while the investigation is being carried out and subsequently, of all the matters mentioned in paragraph (5).

(2) In any case in which there is an investigation of a complaint in accordance with the provisions of these Regulations—

- (a) by the relevant appropriate authority on its own behalf, or
- (b) under the supervision of the IPCC,
- (c) by the police under supervision of IPCC,

it shall be the duty of the person investigating to provide the complainant with all such information as will keep the complainant properly informed, while the investigation is being carried out and subsequently, of all the matters mentioned in paragraph (5).

(3) Where paragraph (2) applies, it shall be the duty of the IPCC to give the relevant appropriate authority all such directions as it considers appropriate for securing that that authority complies with its duty under that subsection; and it shall be the duty of the relevant appropriate authority to comply with any direction given to it under this paragraph.

(4) The IPCC shall consult the relevant appropriate authority before deciding whether or not to disclose information to the complainant in accordance with paragraph (1) or to give directions under paragraph (3), and shall have regard to any representations made to it by the relevant appropriate authority in taking that decision.

(5) For the purposes of paragraphs (1) and (2) the matters of which the complainant must be kept properly informed are—

- (a) the progress of the investigation;
- (b) any provisional findings of the person carrying out the investigation;
- (c) whether any report has been submitted under regulation 65 (final reports on investigations: DSI matters);
- (d) the action (if any) that is taken in respect of the matters dealt with in any such report; and
- (e) the outcome of any such action.

(6) It shall be the duty of a person appointed to carry out an investigation under these Regulations to provide the IPCC or, as the case may be, the relevant appropriate authority with all such information as the IPCC or that authority may reasonably require for the purpose of performing its duty under this regulation.

Duty to provide information for other persons

50.—(1) A person has an interest in being kept properly informed about the handling of a complaint or recordable conduct matter or DSI matter which is the subject of an investigation in accordance with the provisions of these Regulations if—

- (a) it appears to the IPCC or to a relevant appropriate authority that that person is a person falling within paragraph (2) or (3); and that person consented to the provision of information in accordance with this regulation and that consent has not been withdrawn.

(2) A person falls within this paragraph if (in the case of a complaint or recordable conduct matter) that person—

- (a) is a relative of a person whose death is the alleged result from the conduct complained of or to which the recordable conduct matter relates;
- (b) is a relative of a person whose serious injury is the alleged result from that conduct and that person is incapable of making a complaint;
- (c) has suffered serious injury as the alleged result of that conduct.

- (3) A person falls within this paragraph if (in the case of a DSI matter) that person—
- (a) is a relative of the person who has died;
 - (b) is a relative of the person who has suffered serious injury and that person is incapable of making a complaint;
 - (c) is the person who has suffered serious injury.
- (4) A person who does not fall within paragraph (2) or (3) has an interest in being kept properly informed about the handling of a complaint, recordable conduct matter or DSI matter if—
- (a) the IPCC or a relevant appropriate authority considers that that person has an interest in the handling of the complaint, conduct matter or DSI matter which is sufficient to make it appropriate for information to be provided to that person in accordance with this regulation; and
 - (b) that person has consented to the provision of information in accordance with this regulation.
- (5) In relation to a complaint, this regulation confers no rights on the complainant.
- (6) A person who has an interest in being kept properly informed about the handling of a complaint conduct matter or DSI matter is referred to in this regulation as an “interested person”.
- (7) In any case in which there is an investigation of the complaint, recordable conduct matter or DSI matter in accordance with the provisions of these Regulations—
- (a) by the IPCC, or
 - (b) under its management,
- it shall be the duty of the IPCC to provide the interested person with all such information as will keep the interested person properly informed, while the investigation is being carried out and subsequently, of all the matters mentioned in paragraph (11).
- (8) In any case in which there is an investigation of the complaint, recordable conduct matter or DSI matter in accordance with the provisions of these Regulations—
- (a) by the relevant appropriate authority on its own behalf, or
 - (b) under the supervision of the IPCC,
- it shall be the duty of the relevant appropriate authority to provide the interested person with all such information as will keep him properly informed, while the investigation is being carried out and subsequently, of all the matters mentioned in paragraph (11).
- (9) Where paragraph (8) applies, it shall be the duty of the IPCC to give the relevant appropriate authority all such directions as it considers appropriate for securing that that authority complies with its duty under that paragraph; and it shall be the duty of the relevant appropriate authority to comply with any direction given to it under this paragraph.
- (10) The IPCC shall consult the relevant appropriate authority before deciding whether or not to disclose information to the interested person in accordance with paragraph (7) or to give directions under paragraph (9), and shall have regard to any representations made to it by the relevant appropriate authority in taking that decision.
- (11) The matters of which the interested person must be kept properly informed are—
- (a) the progress of the investigation;
 - (b) any provisional findings of the person carrying out the investigation;
 - (c) whether the IPCC or the relevant appropriate authority has made a determination under regulation 29 (procedure where conduct matter is revealed during investigation of a DSI matter);

- (d) whether any report has been submitted under regulation 61 (action by a police force on completion of an investigation report), 63 (action by the IPCC in response to an investigation report under regulation 62) or 64 (action by the relevant appropriate authority in response to an investigation report under regulation 62);
 - (e) the action (if any) that is taken in respect of the matters dealt with in any such report; and
 - (f) the outcome of any such action.
- (12) Paragraphs (5) and (6) of regulation 49 (duty to keep the complainant informed) apply for the purposes of this regulation as they apply for the purposes of that regulation.
- (13) In this regulation “relative” means any spouse, partner, parent or adult child.

Duty to keep the relevant officer, relevant official of the Secretary of State or official exercising customs revenue functions informed

51.—(1) If during the course of an investigation of a complaint which falls to be determined under these Regulations it appears to the person investigating that there is an indication that the relevant officer, relevant official of the Secretary of State or official exercising customs revenue functions (“the person whose conduct is in question”) may have—

- (a) committed a criminal offence, or
- (b) behaved in a manner which would justify the bringing of disciplinary proceedings,

the person investigating the complaint or matter must give a notification to the person whose conduct is in question concerned that complies with paragraph (2).

(2) The notification will—

- (a) provide sufficient details of the complaint or matter in question so that the person in whose conduct is in question may make representations to the person investigating the complaint or matter;
- (b) give the prescribed information about the effect of regulation 52 (duty to consider submissions from relevant officers, relevant officials of the Secretary of State and officials exercising customs revenue functions); and
- (c) give such information that may be prescribed.

(3) Paragraph (1) and (2) do not apply for so long as the person investigating the complaint or the matter considers that giving the notification might prejudice—

- (a) the investigation, or
- (b) any other investigation (including, in particular, a criminal investigation).

(4) In this regulation and regulations 53 (duty to provide certain information to the relevant appropriate authority) and 54 (manner in which duties to provide information to the complainant are to be performed), the relevant officer, relevant official of the Secretary of State or official exercising customs revenue functions (“the person whose conduct is in question”)—

- (a) in relation to an investigation of a complaint, means the person in respect of whom it appears to the person investigating that there is the indication mentioned in paragraph (1)
- (b) in relation to an investigation of a recordable conduct matter, means the person to whose conduct the investigation relates.

(5) In this regulation “relevant document”—

- (a) means a document relating to any complaint or matter under investigation, and
- (b) includes such a document containing suggestions as to lines of inquiry to be pursued or witness to be interviewed.

(6) In this regulation “relevant statement” means an oral or written statement relating to any complaint or matter under investigation.

Duty to consider submissions from relevant officers, relevant officials of the Secretary of State and officials exercising customs revenue functions

52.—(1) This regulation applies where a notification under regulation 51 (duty to keep the relevant officer, relevant official or official exercising customs revenue functions informed) has been issued to a relevant officer, relevant official of the Secretary of State or official exercising customs revenue functions (“the person whose conduct is in question”).

(2) If—

- (a) the person whose conduct is in question provides the person investigating the complaint or matter with a relevant statement or a relevant document, or
- (b) any person of a prescribed description provides the person investigating the complaint or matter with a relevant document,

the person investigating must consider the statement or document.

Duty to provide certain information to the relevant appropriate authority

53.—(1) This regulation applies during the course of an investigation within regulation 51(1) (duty to keep the relevant officer, relevant official of the Secretary of State or official exercising customs revenue functions informed).

(2) The person investigating the complaint or matter must supply the relevant appropriate authority with such information in that person’s possession as the relevant appropriate authority may reasonably request for the purpose of determining whether the person concerned should be, or should remain, suspended from duty.

Manner in which duties to provide information to the complainant are to be performed

54.—(1) For the purposes of regulations 49(4) (duty to keep the complainant informed) and 50(9) (duty to provide information for other persons), the manner in which the IPCC or, as the case may be, a relevant appropriate authority shall perform the duties imposed by those regulations is as follows.

(2) The IPCC, in a case falling within section 49(1) or 50(7) (duty to provide information for other persons), shall inform the complainant or, as the case may be, the interested party—

- (a) of the progress of the investigation promptly and in any event-
 - (i) if there has been no previous notification, within four weeks of the start of the investigation; and
 - (ii) in any other case, within four weeks of the previous notification;
- (b) of any provisional finding of the person carrying out the investigation as frequently as the IPCC determines to be appropriate in order for the complainant to be kept properly informed.

(3) The relevant appropriate authority, in a case falling within regulation 49(2) or 50(8) shall inform the complainant or the interested party (as the case may be)—

- (a) of the progress of the investigation promptly and in any event-
 - (i) if there has been no previous notification, within four weeks of the start of the investigation; and
 - (ii) in any other case, within four weeks of the previous notification;

- (b) of any provisional findings of the person carrying out the investigation frequently as the relevant appropriate authority determine to be appropriate in order for the complainant to be kept properly informed.
- (4) When an investigation has been completed, each complainant and interested person shall be notified—
 - (a) of the date on which the final report under regulation 62 (final reports on investigations: complaints, conduct matters and certain DSI matters) is likely to be submitted;
 - (b) of the date on which the notification under regulation 63(11) (action by the IPCC in response to an investigation report under regulation 62) is likely to be given.
- (5) In performing the duties imposed by regulations 49(1) and (2), and 50(7) and (8), the IPCC or, as the case may be, the relevant appropriate authority shall determine whether it is appropriate for it to accept and take into account written representations from the complainant or, as the case may be, an interested person.
- (6) As soon as practicable after those written representations have been taken into account, the IPCC or, as the case may be, the relevant appropriate authority shall send to the complainant or interested person a written record of how any concerns of that person will be addressed.
- (7) Before notifying a complainant or interested person of how the IPCC has taken those written representations into account, the IPCC shall consult the relevant appropriate authority and shall have regard to any representations made to it in the notification.
- (8) As soon as practicable after any disciplinary hearing or other action that is taken in respect of the matters dealt with in any report submitted under regulation 62, the IPCC or, as the case may be, a relevant appropriate authority shall notify any complainant and interested person of the outcome of that hearing or action, including the fact and outcome of any appeal against the findings of or sanctions imposed by such a hearing.
- (9) Before notifying a complainant or interested person of how the outcome of the disciplinary hearing and the outcome of any appeal against the findings of or sanctions imposed by such a hearing, the IPCC shall consult the relevant appropriate authority and shall have regard to any representations made to it.
- (10) If the IPCC or, as the case may be, the relevant appropriate authority, considers that an investigation has made minimal or no progress since the previous notification, then the next notification may be made by any means that in the opinion of the IPCC or, as the case may be, the relevant appropriate authority is suitable.

Exceptions to the duty to keep the complainant informed and to provide information for other persons

- 55.—**(1) Subject to paragraph (2), the duties mentioned in regulation 49(1) and (2) (duty to keep the complainant informed) and regulation 50(7) and (8) (duty to provide information for other persons) shall not apply in circumstances where in the opinion of the IPCC, or, as the case may be, of the relevant appropriate authority, the non-disclosure of information is necessary for the purpose of—
- (a) preventing the premature or inappropriate disclosure of information that is relevant to, or may be used in, any actual or prospective criminal proceedings;
 - (b) preventing the disclosure of information in any circumstances in which its non-disclosure—
 - (i) is in the interests of national security;
 - (ii) is for the purposes of the prevention or detection of crime, or the apprehension or prosecution of offenders;

- (iii) is required on proportionality grounds; or
- (iv) is otherwise necessary in the public interest.

(2) The IPCC or, as the case may be, the relevant appropriate authority shall not conclude that the non-disclosure of information is necessary under paragraph (1) unless it is satisfied that—

- (a) there is a real risk of the disclosure of that information causing an adverse effect; and
- (b) that adverse effect would be significant.

(3) The IPCC shall consult the relevant appropriate authority in any case under paragraph (1)(b) before deciding whether or not it is satisfied under paragraph (2).

(4) Notwithstanding paragraph (1), the IPCC, or as the case may be, the relevant appropriate authority shall consider whether the non-disclosure of information is justified under this regulation in circumstances where—

- (a) that information is relevant to, or may be used in, any actual or prospective disciplinary proceedings;
- (b) the disclosure of that information may lead to the contamination of the evidence of witnesses during such proceedings;
- (c) the disclosure of that information may prejudice the welfare or safety of any third party;
- (d) that information constitutes criminal intelligence.

Notification of complaints etc.

56.—(1) Where a complaint is recorded under regulation 13(4) (initial handling and recording of complaints), the relevant appropriate authority shall subject to paragraphs (2) to (4), supply the complainant with a written notification setting out a record of that complaint.

(2) A notification supplied under this regulation may keep anonymous the identity of the complainant or of any other person.

(3) A relevant appropriate authority may decide not to supply the complainant with a notification under this regulation if it is of the opinion that to do so—

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

(4) Where a relevant appropriate authority decides not to supply such a notification, it shall keep that decision under regular review.

Notification of actions and decisions

57.—(1) So far as not covered by regulation 63(11) and (12) (action by the IPCC in response to an investigation report under regulation 62) and regulation 70(6) and (7) (appeals to the IPCC with respect to an investigation), where the IPCC takes any action or decisions in consequence of it having received a memorandum under regulation 63(9) or regulation 70(3) of these Regulations, it shall notify such action or decisions, together with an explanation of its reasons for having taken them, to—

- (a) the relevant appropriate authority;
- (b) the complainant and any other interested person within the meaning of regulation 50(2) and (3);
- (c) subject to paragraph (3), the person complained against.

(2) Notwithstanding paragraph (1), the IPCC shall include in any notification under this regulation a statement as to whether it intends to bring and conduct, or otherwise participate or intervene in, any disciplinary proceedings.

(3) The IPCC may decide not to give such a notification and explanation to the person complained against if it is of the opinion that that notification might prejudice any criminal investigation, pending proceedings, or review of the complaint.

Information for complainant about disciplinary recommendations

58.—(1) Where—

- (a) the IPCC makes recommendations under regulation 67 (duties with respect to disciplinary proceedings) in the case of an investigation of a complaint, and
- (b) the relevant appropriate authority notifies the IPCC that the recommendations have been accepted, the IPCC shall notify the complainant and every person entitled to be kept properly informed in relation to the complaint under regulation 50 (duty to provide information for other persons) of that fact and of the steps that have been, or are to be taken, by the relevant appropriate authority to give effect to it.

(2) Where in the case of an investigation of a complaint the relevant appropriate authority—

- (a) notify the IPCC that it does not (either in whole or in part) accept recommendations made by the IPCC under regulation 67, or
- (b) fails to take steps to give full effect to any such recommendations,

it shall be the duty of the IPCC to determine what if any further steps to take under that regulation.

(3) It shall be the duty of the IPCC to notify the complainant and every person entitled to be kept properly informed in relation to the complaint under regulation 50—

- (a) of any determination under paragraph (2) not to take further steps under regulation 67; and
- (b) where they determine under that sub-paragraph to take further steps under that regulation, of the outcome of the taking of those steps.

Register to be kept by the IPCC

59.—(1) The IPCC shall establish and maintain a register of all information supplied to it by a relevant appropriate authority under these Regulations.

(2) Subject to paragraph (3), the IPCC may publish or otherwise disclose to any person any information held on the register provided that the publication or disclosure is necessary for or conducive to the purpose of—

- (a) learning lessons from the handling of, or demonstrating the thoroughness and effectiveness of local resolutions, of investigations by the IPCC or of managed or supervised investigations;
- (b) raising public awareness of the complaints system; or
- (c) improving the complaints system.

(3) Information may not be published or disclosed in circumstances where in the opinion of the IPCC the non-disclosure of information is necessary for the purposes mentioned in regulation 55(1) (a) and (b) (exceptions to the duty to keep the complainant informed and to provide information for other persons).

(4) The IPCC shall consult the relevant appropriate authority before disclosing information in accordance with paragraph (2) and shall have regard to any representations made to it by the relevant appropriate authority when deciding what to disclose.

Manner and time limits of notifications

60.—(1) Any notification to be given under these Regulations shall—

- (a) unless otherwise specified in these Regulations or determined in guidance issued by the IPCC, be given in writing;
- (b) unless otherwise specified in these Regulations, be made within such period as the IPCC may determine in guidance.

(2) No time limit mentioned in these Regulations or determined by the IPCC shall apply in any case where exceptional circumstances prevent that time limit being complied with.