
STATUTORY INSTRUMENTS

2009 No. 2133

**The UK Border Agency (Complaints
and Misconduct) Regulations 2009**

PART 7

REPORTS AND RECOMMENDATIONS

Action by a police force on completion of an investigation report

61.—(1) This regulation applies on completion of an investigation by a person appointed in accordance with regulation 38 (investigation by a police force at the request of a relevant appropriate authority).

(2) On completion of that investigation the person appointed in accordance with regulation 38 shall determine whether the conditions set out in sub-paragraphs (4) and (5) are satisfied in respect of the report;

(3) If the person appointed in accordance with regulation 38 determines that those conditions are so satisfied, that person shall notify—

- (a) the Director of Public Prosecutions or, as the case may be the Director of Revenue and Customs Prosecutions of the determination and send that person a copy of the report; and
- (b) the relevant appropriate authority and the persons mentioned in paragraph (8) of its determination under paragraph (a).

(4) The first condition is that the report indicates that a criminal offence may have been committed by a person to whose conduct the investigation related.

(5) The second condition is that the circumstances are such that, in the opinion of the person appointed in accordance with regulation 38, it is appropriate for the matters dealt with in the report to be considered by the Director of Public Prosecutions or, as the case may be the Director of Revenue and Customs Prosecutions.

(6) The Director of Public Prosecutions or, as the case may be, the Director of Revenue and Customs Prosecutions shall notify the person appointed in accordance with regulation 38 of any decision of the Director to take, or not to take, action in respect of the matters dealt with in any report a copy of which has been sent to the Director under paragraph (3)(a).

(7) It shall be the duty of the person appointed in accordance with regulation 38 to notify the persons mentioned in paragraph (8) if criminal proceedings are brought against any person by the Director of Public Prosecutions or, as the case may be, the Director of Revenue and Customs Prosecutions in respect of any matters dealt with in a report copied to the Director under paragraph (3) (a).

(8) Those persons are—

- (a) in the case of a complaint, 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); and

- (b) in the case of a recordable conduct matter, every person entitled to be kept properly informed in relation to that matter under that regulation.

Final reports on investigations: complaints, conduct matters and certain DSI matters

62.—(1) This regulation applies on the completion of an investigation of—

- (a) a complaint, or
- (b) a conduct matter.

(2) A person appointed under regulation 37 (investigations by the relevant appropriate authority on its own behalf) shall submit a report on that person’s investigation to the relevant appropriate authority.

(3) A person appointed in accordance with regulation 38 (investigation by a police force at the request of the relevant appropriate authority) shall—

- (a) submit a report on that person’s investigation to the relevant appropriate authority; and
- (b) send a copy of that report to the IPCC.

That report shall set out the determination of the person appointed in accordance with regulation 38 as to whether the conditions set out in regulation 61(4) and (5) (action by a police force on completion of an investigation report) and whether the Director of Public Prosecutions or, as the case may be, the Director of Revenue and Customs Prosecutions has been sent a copy of the investigation report in accordance with regulation 61(3)(a).

(4) A person appointed under regulation 39 (investigations supervised by the IPCC), 40 (investigations by a police force under the management or under the supervision of the IPCC), or 41 (investigations managed by the IPCC) shall—

- (a) submit a report on that person’s investigation to the IPCC; and
- (b) send a copy of that report to the relevant appropriate authority.

(5) A person designated under regulation 42 (investigations by the IPCC itself) as the person in charge of an investigation by the IPCC itself shall submit a report on it to the IPCC.

(6) A person submitting a report under this regulation shall not be prevented by any obligation of secrecy imposed by any rule of law or otherwise from including all such matters in that person’s report as that person thinks fit.

(7) A person who has submitted a report on an investigation under this regulation on an investigation within regulation 52(1) (duty to consider submissions from relevant officers, relevant officials of the Secretary of State and officials exercising customs revenue functions) must supply the relevant appropriate authority with such copies of further documents or other items in that person’s possession as the authority may request.

(8) The relevant appropriate authority may only make a request in respect of a copy of a document or other item if the authority—

- (a) considers that the document or item is of relevance to the investigation, and
- (b) requires a copy of the document or the item for either or both of the purposes mentioned in paragraph (9).

(9) Those purposes are—

- (a) complying with any obligation which the authority has under the disciplinary proceedings in relation to any person whose conduct is the subject-matter of the investigation;
- (b) ensuring that any such officer (a person whose conduct is in question) receives a fair hearing at any disciplinary proceedings in respect of any such conduct of that officer.

Action by the IPCC in response to an investigation report under regulation 62

- 63.—(1) This regulation applies where—
- (a) a report on an investigation carried out under the management of the IPCC is submitted to it under paragraph (3) of regulation 62 (final reports on investigations: complaints, conduct matters and certain DSI matters); or
 - (b) a report on an investigation carried out by a person designated by the IPCC is submitted to it under paragraph (5) of that regulation.
- (2) On receipt of the report, the IPCC—
- (a) if it appears that the relevant appropriate authority has not already been sent a copy of the report, shall send a copy of the report to that authority;
 - (b) shall determine whether the conditions set out in sub-paragraphs (3) and (4) are satisfied in respect of the report;
 - (c) if it determines that those conditions are so satisfied, shall notify the Director of Public Prosecutions or as the case may be, the Director of Revenue and Customs Prosecutions of the determination and send that person a copy of the report; and
 - (d) shall notify the relevant appropriate authority and the persons mentioned in paragraph (7) of its determination under paragraph (b) and of any action taken by it under paragraph (c).
- (3) The first condition is that the report indicates that a criminal offence may have been committed by a person to whose conduct the investigation related.
- (4) The second condition is that—
- (a) the circumstances are such that, in the opinion of the IPCC, it is appropriate for the matters dealt with in the report to be considered by the Director of Public Prosecutions or as the case may be the Director of Revenue and Customs Prosecutions.
- (5) The Director of Public Prosecutions or, as the case may be, the Director of Revenue and Customs Prosecutions shall notify the IPCC of any decision of the Director to take, or not to take, action in respect of the matters dealt with in any report a copy of which has been sent to the Director under paragraph (2)(c).
- (6) It shall be the duty of the IPCC to notify the persons mentioned in paragraph (5) if criminal proceedings are brought against any person by the Director of Public Prosecutions or, as the case may be the Director of Revenue and Customs Prosecutions in respect of any matters dealt with in a report copied to the Director under paragraph (2)(c).
- (7) Those persons are—
- (a) in the case of a complaint, 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); and
 - (b) in the case of a recordable conduct matter, every person entitled to be kept properly informed in relation to that matter under that section.
- (8) On receipt of the report, the IPCC shall also notify the relevant appropriate authority that it must determine—
- (a) whether any relevant officer, relevant official of the Secretary of State or official exercising customs revenue functions (person whose conduct is in question) has a case to answer in respect of their conduct or has no case to answer; and
 - (b) what action (if any) the authority is required to, or will in its discretion, take in respect of the matters dealt with in the report; and
 - (c) what other action (if any) the authority will in its discretion take in respect of those matters.

(9) On receipt of a notification under paragraph (8) the relevant appropriate authority shall make those determinations and submit a memorandum to the IPCC which—

- (a) sets out the determinations the authority has made, and
- (b) if the relevant appropriate authority has decided in relation to any person whose conduct is the subject-matter of the report that disciplinary proceedings should not be brought against that person, sets out its reasons for so deciding.

(10) On receipt of a memorandum under paragraph (9), the IPCC shall—

- (a) consider the memorandum and whether the relevant appropriate authority has made the determinations under paragraph (9)(a) that the IPCC considers appropriate in respect of the matters dealt with in the report;
- (b) determine, in the light of its consideration of those matters, whether or not to make recommendations under regulation 67 (duties with respect to disciplinary proceedings); and
- (c) make such recommendations (if any) under that regulation as it thinks fit.

(11) On the making of a determination under paragraph (10)(b) the IPCC shall give a notification—

- (a) in the case of a complaint, to the complainant and to every person entitled to be kept properly informed in relation to the complaint under regulation 49 (duty to keep the complainant informed); and
- (b) in the case of a recordable conduct matter, to every person entitled to be kept properly informed in relation to that matter under regulation 50 (duty to provide information for other persons).

(12) The notification required by paragraph (11) is one setting out—

- (a) the findings of the report;
- (b) the IPCC's determination under paragraph (10)(b); and
- (c) the action which the relevant appropriate authority is to be recommended to take as a consequence of the determination.

(13) Paragraphs (5) and (6) of regulation 49 (duty to keep the complainant informed) shall have effect in relation to the duties imposed on the IPCC by paragraph (11) of this regulation as they have effect in relation to the duties imposed on the IPCC by that regulation.

(14) Except so far as may be otherwise provided by regulations made by virtue of paragraph (13), the IPCC shall be entitled (notwithstanding any obligation of secrecy imposed by any rule of law or otherwise) to discharge the duty to give a person mentioned in paragraph (11) notification of the findings of the report by sending that person a copy of the report.

Action by the relevant appropriate authority in response to an investigation report under regulation 62

64.—(1) This regulation applies where—

- (a) a report of an investigation is submitted to the relevant appropriate authority in accordance with regulation 62(2) (final reports on investigations: complaints, conduct matters and certain DSI matters); or
- (b) a report, or a copy of a report is sent to the relevant appropriate authority in accordance with regulation 62(3) or (4).

(2) On receipt of the report or (as the case may be) of the copy, the relevant appropriate authority shall note the contents of the report and determine—

- (a) whether any person to whose conduct the investigation related has a case to answer in respect of their conduct or has no case to answer;
 - (b) what action (if any) the authority is required to, or will in its discretion, take in respect of the matters dealt with in the report; and
 - (c) what other action (if any) the authority will in its discretion take in respect of those matters.
- (3) On the making of the determinations under paragraph (2) the relevant appropriate authority shall give a notification—
- (a) in the case of a complaint, to the complainant and to every person entitled to be kept properly informed in relation to the complaint under regulation 49 (duty to keep complainant informed); and
 - (b) in the case of a recordable conduct matter, to every person entitled to be kept properly informed in relation to that matter under regulation 50 (duty to provide information for other persons).
- (4) The notification required by paragraph (3) is one setting out—
- (a) the findings of the report;
 - (b) the determinations the authority has made under paragraph (2);
 - (c) the action (if any) which that authority has decided to take; and
 - (d) the complainant's right of appeal under regulation 70 (appeals to the IPCC with respect to an investigation).
- (5) Paragraphs (5) and (6) of regulation 49 shall have effect in relation to the duties imposed on the relevant appropriate authority by paragraph (3) of this regulation as they have effect in relation to the duties imposed on the relevant appropriate authority by that section.
- (6) Except so far as may be otherwise provided by paragraph (5), the relevant appropriate authority shall be entitled (notwithstanding any obligation of secrecy imposed by any rule of law or otherwise) to discharge the duty to give a person mentioned in paragraph (4) notification of the findings of the report by sending that person a copy of the report.

Final reports on investigations: DSI matters

65.—(1) This regulation applies on the completion of an investigation of a DSI matter in respect of which neither the IPCC, nor the person appointed under regulation 38 (investigation by a police force at the request of the relevant appropriate authority) or 40 (investigation by a police force under the management or under the supervision of the IPCC) has made a determination that 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.
- (2) The person investigating shall—
- (a) submit a report on the investigation to the IPCC; and
 - (b) send a copy of that report to the relevant appropriate authority.
- (3) A person submitting a report under this regulation shall not be prevented by any obligation of secrecy imposed by any rule of law or otherwise from including all such matters in his report as that person thinks fit.
- (4) On receipt of the report, the IPCC shall determine whether the report indicates that a relevant officer, a relevant official of the Secretary of State or official exercising customs revenue functions may have—
- (a) committed a criminal offence, or

(b) behaved in a manner which would justify the bringing of disciplinary proceedings.

(5) If the IPCC determines under paragraph (4) that there is no indication in the report that an officer may have—

(a) committed a criminal offence, or

(b) behaved in a manner which would justify the bringing of disciplinary proceedings,

it shall make such recommendations or give such advice under regulation 6(1)(e) (general functions of the IPCC) (if any) as it considers necessary or desirable.

(6) Paragraph (5) does not affect any power of the IPCC to make recommendations or give advice under regulation 6(1)(e) in other cases (whether arising under these Regulations or otherwise).

Action by the IPCC in response to an investigation report under regulation 65

66.—(1) If the IPCC determines under regulation 65(4) (final reports on investigations: other DSI matters) that the report indicates that a relevant officer, relevant official or official exercising customs revenue functions may have—

(a) committed a criminal offence, or

(b) behaved in a manner which would justify the bringing of disciplinary proceedings,

it shall notify the relevant appropriate authority in relation to the person whose conduct is in question of its determination and, if it appears that that authority has not already been sent a copy of the report, send a copy of the report to that authority.

(2) Where the relevant appropriate authority is notified of a determination by the IPCC under paragraph (1), it shall record the matter under regulation 18 (recording etc. of conduct matters in other cases) as a conduct matter (and the other provisions of these Regulations shall apply in relation to that matter accordingly).

(3) Where a DSI matter is recorded under regulation 18 as a conduct matter by virtue of paragraph (2)—

(a) the person investigating the DSI matter shall (subject to any determination made by the IPCC under regulation 31(6) (power of the IPCC to determine the form of an investigation) investigate the conduct matter as if appointed or designated to do so, and

(b) the other provisions of these Regulations shall apply in relation to that matter accordingly.

Duties with respect to disciplinary proceedings

67.—(1) This regulation applies where, in the case of any investigation, the relevant appropriate authority—

(a) has given, or is required to give, a notification under regulation 63(12) (action by the IPCC in response to an investigation report under regulation 62) of the action it is proposing to take in relation to the matters dealt with in any report of the investigation; or

(b) has submitted, or is required to submit, a memorandum to the IPCC under regulation 63 or 70 (appeals to the IPCC with respect to an investigation) setting out the action that it is proposing to take in relation to those matters.

(2) Subject to regulation 46 (restrictions on proceedings pending the conclusion of an investigation) and to any recommendations or directions under the following provisions of this regulation, it shall be the duty of the relevant appropriate authority—

(a) to take the action which has been or is required to be notified or, as the case may be, which is or is required to be set out in the memorandum; and

(b) in a case where that action consists of or includes the bringing of disciplinary proceedings, to secure that those proceedings, once brought, are proceeded with to a proper conclusion.

(3) Where this regulation applies by virtue of paragraph (1)(b), the IPCC may make a recommendation to the relevant appropriate authority in respect of any relevant officer, relevant official of the Secretary of State or official exercising customs revenue functions—

- (a) that the person has a case to answer in respect of their conduct or has no case to answer in relation to their conduct to which the investigation related;
- (b) that disciplinary proceedings are brought against that person in respect of the conduct to which the investigation related; or
- (c) that any disciplinary proceedings brought against that person are modified so as to deal with such aspects of that conduct as may be so specified;

and it shall be the duty of the relevant appropriate authority to notify the IPCC whether it accepts the recommendation and (if it does) to set out in the notification the steps that it is proposing to take to give effect to it.

(4) If, after the IPCC has made a recommendation under this regulation, the relevant appropriate authority does not take steps to secure that full effect is given to the recommendation—

- (a) the IPCC may direct the relevant appropriate authority to take steps for that purpose; and
- (b) it shall be the duty of the relevant appropriate authority to comply with the direction.

(5) A direction under paragraph (4) may, to such extent as the IPCC thinks fit, set out the steps to be taken by the appropriate authority in order to give effect to the recommendation.

(6) Where the IPCC gives the relevant appropriate authority a direction under this regulation, it shall supply the relevant appropriate authority with a statement of its reasons for doing so.

(7) Where disciplinary proceedings have been brought in accordance with a recommendation or direction under this regulation, it shall be the duty of the authority to ensure that they are proceeded with to a proper conclusion.

(8) The IPCC may at any time withdraw a direction given under this regulation; and paragraph (7) shall not impose any obligation in relation to any time after the withdrawal of the direction.

(9) The relevant appropriate authority shall keep the IPCC informed—

- (a) in a case in which this regulation applies by virtue of paragraph (1)(b), of whatever action it takes in pursuance of its duty under paragraph (2); and
- (b) in every case of a recommendation or direction under this regulation, of whatever action it takes in response to that recommendation or direction.

Complaints against a person whose identity is not ascertained

68.—(1) Where a complaint or conduct matter relates to the conduct of a person whose identity is not ascertained at the time at which the complaint is made or the conduct matter is recorded, or whose identity is not ascertained during or subsequent to, the investigation of the complaint or recordable conduct matter, then these Regulations shall apply in relation to such a person as if it did not include—

- (a) any requirement for the person complained against to be given a or an opportunity to make representations;
- (b) any requirement for the IPCC or the relevant appropriate authority to determine whether a criminal offence may have been committed by the person whose conduct has been the subject-matter of an investigation, or to take any action in relation to such a determination;

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- (c) any requirement for a relevant appropriate authority to determine whether disciplinary proceedings should be brought against a person whose conduct is the subject-matter of a report.
- (2) Where the identity of such a person is subsequently ascertained, the IPCC and relevant appropriate authority shall take such action in accordance with these Regulations as they see fit.