
STATUTORY INSTRUMENTS

2010 No. 782

**The UK Border Agency (Complaints
and Misconduct) Regulations 2010**

PART 2

HANDLING OF COMPLAINTS AND CONDUCT MATTERS ETC

Duties to preserve evidence relating to complaints

12.—(1) Where—

- (a) a complaint is made to the relevant appropriate authority about the conduct of a relevant officer, relevant official of the Secretary of State, relevant contractor, official exercising customs revenue functions or customs revenue contractor; or
- (b) the relevant appropriate authority becomes aware that a complaint about the conduct of a relevant officer, relevant official of the Secretary of State, relevant contractor, official exercising customs revenue functions or customs revenue contractor has been made to the IPCC,

the relevant appropriate authority shall take all such steps as appear to the relevant appropriate authority to be appropriate for the purposes of these Regulations for obtaining and preserving evidence relating to the conduct complained of.

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

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

(4) It shall be the duty of the relevant appropriate authority to take all such specific steps for obtaining or preserving evidence relating to any conduct that is the subject-matter of a complaint as the relevant appropriate authority may be directed to take for the purposes of this regulation by the IPCC.

Initial handling and recording of complaints

13.—(1) Where a complaint is made to the IPCC—

- (a) it shall ascertain whether the complainant is content for the relevant appropriate authority to be notified of the complaint; and
- (b) it shall give notification of the complaint to the relevant appropriate authority if the complainant is so content.

(2) Where the IPCC—

- (a) is prevented by paragraph (1) from notifying any complaint to the relevant appropriate authority, and
- (b) considers that it is in the public interest for the subject-matter of the complaint to be brought to the attention of the relevant appropriate authority and recorded under regulation 20 (recording and reference of conduct matters),

the IPCC may bring that matter to the relevant appropriate authority's attention under that regulation as if it were a recordable conduct matter, and (if it does so) the following provisions of these Regulations shall have effect accordingly as if it were such a matter.

(3) Where the IPCC, or relevant appropriate authority gives notification of a complaint under paragraphs (1) or (2) or the IPCC brings any matter to the relevant appropriate authority's attention under paragraph (4), the person who gave the notification, or, as the case may be, the IPCC shall notify the complainant—

- (a) that the notification has been given and of what it contained; or
- (b) that the matter has been brought to the relevant appropriate authority's attention to be dealt with otherwise than as a complaint.

(4) Where a matter is brought to the relevant appropriate authority's attention, the relevant appropriate authority shall record the complaint.

(5) Nothing in this regulation shall require the notification or recording by any person of any complaint about any conduct if—

- (a) that person is satisfied that the subject-matter of the complaint has been, or is already being, dealt with by means of criminal or disciplinary proceedings against the person whose conduct it was; or
- (b) the complaint has been withdrawn.

Keeping of records

14.—(1) The relevant appropriate authority shall keep records, in such form as the IPCC shall determine, of—

- (a) every complaint and purported complaint that is made to the relevant appropriate authority;
- (b) every conduct matter recorded by the relevant appropriate authority under regulation 17(3) (conduct matters arising in civil proceedings); and
- (c) every DSI matter recorded by the relevant appropriate authority under regulation 25 (duty to record DSI matters).

Failures to notify or record a complaint

15.—(1) This regulation applies where anything which is or purports to be a complaint has effect as being received by the relevant appropriate authority (whether in consequence of having been made directly to the relevant appropriate authority or by way of a notification under regulation 13(1) (initial handling and recording of complaints)).

(2) If the relevant appropriate authority decides not to take action under regulation 13 for notifying or recording the whole or any part of what has been received, the relevant appropriate authority shall notify the complainant of the following matters—

- (a) the decision to take no action and, if that decision relates to only part of what was received, the part in question;
- (b) the grounds on which the decision was made; and
- (c) whether the complainant has a right to appeal against that decision under this regulation.

(3) The complainant shall have a right of appeal to the IPCC against any failure by the relevant appropriate authority to make a determination under regulation 13 or to notify or record anything under that regulation if the failure is in respect of conduct which the relevant appropriate authority is required to refer to the IPCC under regulation 21(1)(a) or (b) (reference of complaints to the IPCC).

(4) On an appeal under this regulation, the IPCC shall—

- (a) determine whether any action under regulation 13 should have been taken in the case in question; and
- (b) if the IPCC finds in the complainant's favour, give such directions as the IPCC considers appropriate to the relevant appropriate authority as to the action to be taken for making a determination, or for notifying or recording what was received;

and it shall be for the relevant appropriate authority to comply with any directions given under sub paragraph (b).

(5) Directions under paragraph (4)(b) may require action taken in pursuance of the directions to be treated as taken in accordance with any such provision of regulation 13 as may be specified in the direction.

(6) The IPCC—

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

Handling of complaints by the relevant appropriate authority

16.—(1) This regulation applies where a complaint has been recorded by the relevant appropriate authority unless the complaint—

- (a) is one which has been, or must be, referred to the IPCC under regulation 21 (reference of complaints to the IPCC); and
- (b) is not for the time being either referred back to the authority under regulation 22 (duties of the IPCC on references under regulation 21) or the subject of a determination under regulation 31 (power of the IPCC to determine the form of an investigation).

(2) The relevant appropriate authority shall not be required by virtue of any provisions of this regulation to take any action in relation to the complaint but may handle the complaint in whatever manner it thinks fit or take no action in relation to the complaint.

Conduct matters arising in civil proceedings

17.—(1) This regulation applies where—

- (a) the relevant appropriate authority has received notification (whether or not under this regulation) that civil proceedings relating to any matter have been brought by a member of the public against the Secretary of State or the Director of Border Revenue, or it otherwise appears to the relevant appropriate authority that such proceedings are likely to be so brought; and
- (b) it appears to the relevant appropriate authority (whether at the time of the notification or at any time subsequently) that those proceedings involve or would involve a conduct matter.

(2) Where the relevant appropriate authority becomes aware that those proceedings involve or would involve a conduct matter, the relevant appropriate authority shall record that matter.

(3) Where the relevant appropriate authority records any matter under this regulation it—

- (a) shall first determine whether the matter is one which it is required to refer to the IPCC under regulation 23 (reference of conduct matters to the IPCC) or is one which it would be appropriate to so refer; and
 - (b) if it is not required so to refer the matter and does not do so, may deal with the matter in such other manner (if any) as it may determine.
- (4) Nothing in paragraph (3) shall require the relevant appropriate authority to record any conduct matter if it is satisfied that the matter has been, or is already being, dealt with by means of criminal or disciplinary proceedings against the person to whose conduct the matter relates.
- (5) For the purposes of this regulation civil proceedings involve a conduct matter if—
- (a) they relate to such a matter; or
 - (b) they are proceedings that relate to a matter in relation to which a conduct matter, or evidence of a conduct matter, is or may be relevant.

Recording etc. of conduct matters in other cases

18.—(1) Where—

- (a) a conduct matter comes (otherwise than as mentioned in regulation 17 (conduct matters arising in civil proceedings)) to the attention of the relevant appropriate authority; and
- (b) it appears to the relevant appropriate authority that the conduct involved in that matter falls within paragraph (2)

it shall be the duty of the relevant appropriate authority to record that matter.

- (2) Conduct falls within this paragraph if (assuming it to have taken place)—
- (a) it appears to have resulted in the death of any person or in serious injury to any person; or
 - (b) it is of a description specified in paragraph (3).
- (3) The following descriptions of conduct are specified for the purposes of paragraph (2)—
- (a) a serious assault, as defined in guidance issued by the IPCC;
 - (b) a serious sexual offence, as defined in guidance issued by the IPCC;
 - (c) serious corruption, as defined in guidance issued by the IPCC;
 - (d) a criminal offence or behaviour aggravated by discriminatory behaviour on the grounds of a person's race, sex, religion, or other status identified in guidance by the IPCC;
 - (e) a complaint which refers to an allegation of an infringement of Article 2 or 3 of the European Convention on Human Rights;
 - (f) conduct whose gravity or other exceptional circumstances make it appropriate to record the matter in which the conduct is involved; or
 - (g) conduct which is alleged to have taken place in the same incident as one in which conduct within sub-paragraph (a) to (e) is alleged.
- (4) Where the relevant appropriate authority records any matter under this regulation it—
- (a) shall first determine whether the matter is one which it is required to refer to the IPCC under regulation 23 (reference of conduct matters to the IPCC) or is one which it would be appropriate to so refer; and
 - (b) if it is not required so to refer the matter and does not do so, may deal with the matter in such other manner (if any) as it may determine.

(5) Nothing in paragraph (1) shall require the relevant appropriate authority to record any conduct matter if it is satisfied that the matter has been, or is already being, dealt with by means of criminal or disciplinary proceedings against the person to whose conduct the matter relates.

(6) If it appears to the IPCC—

(a) that any matter that has come to its attention is a recordable conduct matter, but

(b) that that matter has not been recorded by the relevant appropriate authority,

the IPCC may direct the relevant appropriate authority to record that matter; and it shall be the duty of that authority to comply with the direction.

Duties to preserve evidence relating to conduct matters

19.—(1) Where the relevant appropriate authority becomes aware of any recordable matter relating to the conduct of a relevant officer, relevant official of the Secretary of State, relevant contractor, official exercising customs revenue functions or customs revenue contractor, it shall be its duty to take all such steps as appear to it to be appropriate for the purposes of these Regulations for obtaining and preserving evidence relating to that matter.

(2) The duty of the relevant appropriate authority under paragraph (1) must be performed as soon as practicable after it becomes aware of the matter in question.

(3) After that, the relevant appropriate authority shall be under a duty until it is satisfied that it is no longer necessary to do so, to continue to take the steps from time to time appearing to it to be appropriate for the purposes of these Regulations for obtaining and preserving evidence relating to the matter.

(4) It shall be the duty of the relevant appropriate authority to take all such specific steps for obtaining or preserving evidence relating to any recordable conduct matter as they may be directed to take for the purposes of these Regulations by the IPCC.