
STATUTORY INSTRUMENTS

2013 No. 2325

**The National Crime Agency (Complaints
and Misconduct) Regulations 2013**

PART 6

Investigations and Subsequent Proceedings

Power of the Commission to determine the form of an investigation

- 38.**—(1) This regulation applies where—
- (a) a complaint, recordable conduct matter or DSI matter is referred to the Commission; and
 - (b) the Commission determines that it is necessary for the complaint or matter to be investigated.
- (2) It shall be the duty of the Commission to determine the form which the investigation should take.
- (3) In making a determination under paragraph (2) the Commission shall have regard to the following factors—
- (a) the seriousness of the case; and
 - (b) the public interest.
- (4) The only forms which the investigation may take in accordance with a determination made under this regulation are an investigation by—
- (a) the appropriate authority on its own behalf;
 - (b) the appropriate authority under the supervision of the Commission;
 - (c) the appropriate authority under the management of the Commission;
 - (d) the Commission.
- (5) The Commission may at any time make a further determination under this regulation to replace an earlier one.
- (6) Where a determination under this regulation replaces an earlier determination under this regulation, or relates to a complaint or matter in relation to which the appropriate authority has already begun an investigation on its own behalf, the Commission may give—
- (a) the appropriate authority; and
 - (b) any person previously appointed to carry out the investigation,
- such directions as it considers appropriate for the purpose of giving effect to the new determination.
- (7) It shall be the duty of a person to whom a direction is given under paragraph (6) to comply with it.
- (8) The Commission shall notify the appropriate authority of any determination that it makes under this regulation in relation to a particular complaint, recordable conduct matter or DSI matter.

Appointment of persons to carry out investigations

39. No person shall be appointed to carry out an investigation under regulation 41, 42 or 43 (investigation by the appropriate authority on its own behalf, supervised and managed investigations)

- (a) unless that person has an appropriate level of knowledge, skills and experience to plan and manage the investigation;
- (b) if that person works, directly or indirectly, under the management of the person whose conduct is being investigated;
- (c) in a case where the person concerned is a senior officer, if that person is the Director General;
- (d) if that person's involvement in the role could reasonably give rise to a concern as to whether that person could act impartially under these Regulations.

Withdrawn complaints

40.—(1) If an appropriate authority receives from a complainant notification in writing signed by the complainant or by a solicitor or other authorised agent on the complainant's behalf to the effect either—

- (a) that the complainant withdraws the complaint; or
- (b) that the complainant does not wish any further steps to be taken in consequence of the complaint,

then the appropriate authority shall forthwith record the withdrawal or the fact that the complainant does not wish any further steps to be taken, as the case may be, and subject to the following provisions of this regulation, these Regulations shall cease to apply in respect of that complaint.

(2) Where a complainant gives such notification as is mentioned in paragraph (1) to the Commission but, so far as is apparent to the Commission, has not sent that notification to the appropriate authority, then—

- (a) the Commission shall send a copy of the notification to the appropriate authority;
- (b) that appropriate authority shall record the withdrawal or the fact that the complainant does not wish any further steps to be taken, as the case may be; and
- (c) subject to the following provisions of this regulation, these Regulations shall cease to apply in respect of that complaint.

(3) Where a complainant gives such notification as is mentioned in paragraph (1) to an appropriate authority, or where the appropriate authority receives a copy of a notification under paragraph (2), and it relates to a complaint—

- (a) which was referred to the Commission under regulation 22 (reference of complaints to the Commission) and which has not been referred back to the appropriate authority under regulation 23 (duties of the Commission on references under regulation 22); or
- (b) which the appropriate authority knows is currently the subject of an appeal to the Commission under regulation 21(3), 25(15), 27(1), 64(19) or 71(2),

then the appropriate authority shall notify the Commission that it has recorded the withdrawal of the complaint or the fact that the complainant does not wish any further steps to be taken, as the case may be.

(4) In a case falling within paragraph (3)(a), the Commission shall determine whether it is in the public interest for the complaint to be treated as a recordable conduct matter, and shall notify the appropriate authority of its decision.

(5) In a case falling within paragraph (3)(b), the appropriate authority shall—

- (a) determine whether it is in the public interest for the complaint to be treated as a recordable conduct matter; and
 - (b) notify the Commission of its determination and the reasons for that determination.
- (6) Where a determination is made that a complaint is to be treated as a recordable conduct matter, then the provisions of these Regulations shall apply to that matter.
- (7) Where a complainant gives such notification as is mentioned in paragraph (1) to an appropriate authority, or where the appropriate authority receives a copy of a notification under paragraph (2), and that notification relates to a complaint which does not fall within paragraph (3), then—
- (a) the appropriate authority shall determine whether it is in the public interest for the complaint to be treated as a recordable conduct matter;
 - (b) if the complaint is to be treated as a recordable conduct matter, the provisions of these Regulations shall apply to that matter;
 - (c) if the complaint is not to be treated as a recordable conduct matter, the provisions of these Regulations shall cease to apply in respect of that complaint.
- (8) In a case where—
- (a) a complaint has been subjected to an investigation by the appropriate authority on its own behalf;
 - (b) the complaint is currently subject to an appeal to the Commission under regulation 71; and
 - (c) the appropriate authority has notified the Commission under paragraph (5)(b) that it has determined that the complaint is not to be treated as a recordable conduct matter,
- the Commission shall consider whether it is in the public interest for that determination to be reversed, and if so it shall instruct the appropriate authority to reverse the decision.
- (9) Where a complainant indicates a wish to withdraw the complaint or the wish that no further steps are to be taken in consequence of the complaint, but the complainant fails to provide a notification to that effect in writing signed by or on behalf of the complainant, then—
- (a) in the case of an indication received by the appropriate authority, the authority shall take the steps set out in paragraph (10);
 - (b) in the case of an indication received by the Commission, the Commission shall refer the matter to the appropriate authority which shall take the steps set out in paragraph (10).
- (10) Those steps are—
- (a) the appropriate authority shall write to the complainant to ascertain whether the complainant wishes to withdraw the complaint or does not wish any further steps to be taken in consequence of the complaint;
 - (b) if the complainant indicates the wish to withdraw the complaint or does not wish any further steps to be taken in consequence of the complaint, or if the complainant fails to reply within a period of 28 days commencing on the day after the date of the written communication under sub-paragraph (a), the appropriate authority shall treat the indication as though it had been received in writing signed by the complainant;
 - (c) if the complainant indicates the wish not to withdraw the complaint, or the wish for further steps to be taken in consequence of the complaint, the appropriate authority shall start or resume the investigation as the case may be.
- (11) Subject to paragraph (12), the appropriate authority shall notify the person complained against if—
- (a) it records the withdrawal of a complaint or the fact that the complainant does not wish any further steps to be taken;
 - (b) it determines that a complaint shall be treated as a recordable conduct matter;

- (c) the Commission determines that a complaint shall be treated as a recordable conduct matter;
- (d) the Commission instructs it to reverse a decision not to treat a complaint as a recordable conduct matter;
- (e) the provisions of these Regulations cease to apply in respect of a complaint.

(12) Nothing in paragraph (11) shall require the appropriate authority to make a notification if it has previously decided under regulation 19 (copies of complaints etc.) not to notify the person complained against of the complaint because it is of the opinion that that might prejudice any criminal investigation or pending proceedings or would be contrary to the public interest.

Investigations by the appropriate authority on its own behalf

41.—(1) This regulation applies if the appropriate authority is required by virtue of—

- (a) any determination made by that authority under regulation 24(3) (whether following the recording of a complaint or on a reference back under regulation 23(2)) or under regulation 26(9); or
- (b) any determination made by the Commission under regulation 38 (power of the Commission to determine the form of an investigation),

to make arrangements for a complaint, recordable conduct matter or DSI matter to be investigated by the appropriate authority on its own behalf.

(2) This regulation also applies if—

- (a) a determination falls to be made by that authority under regulation 28(8), 29(9) or 33(2) in relation to any recordable conduct matter or under regulation 37(2) in relation to any DSI matter; and
- (b) the appropriate authority determines that it is necessary for the matter to be investigated by the authority on its own behalf.

(3) Subject to paragraph (4), it shall be the duty of the appropriate authority to appoint—

- (a) an NCA officer; or
- (b) a person serving with the police,

to investigate the complaint or matter.

(4) The person appointed under this regulation to investigate any complaint or matter—

- (a) in the case of an investigation relating to any conduct of the Director General; or
- (b) in relation to which the relevant officer is the Director General,

must not be an NCA officer.

Investigations supervised by the Commission

42.—(1) This regulation applies where the Commission has determined that it should supervise the investigation by the appropriate authority of any complaint or recordable conduct matter or DSI matter.

(2) On being given notice of that determination, the appropriate authority shall, if it has not already done so, appoint—

- (a) an NCA officer; or
- (b) a person serving with the police,

to investigate the complaint or matter.

(3) The Commission may require that no appointment is made under paragraph (2) unless it has given notice to the appropriate authority that it approves the person whom that authority proposes to appoint.

(4) Where a person has already been appointed to investigate the complaint or matter, or is selected under this paragraph for appointment, and the Commission is not satisfied with that person, the Commission may require the appropriate authority, as soon as reasonably practicable after being required to do so—

- (a) to select another person falling within paragraph (2) to investigate the complaint or matter; and
- (b) to notify the Commission of the person selected.

(5) Where a selection made in pursuance of a requirement under paragraph (4) has been notified to the Commission, the appropriate authority shall appoint that person to investigate the complaint or matter if, but only if, the Commission notifies the authority that it approves the appointment of that person.

(6) The person appointed under this regulation to investigate any complaint or matter—

- (a) in the case of an investigation relating to any conduct of the Director General; or
- (b) in relation to which the relevant officer is the Director General,

must not be an NCA officer.

(7) Subject to paragraphs (8) and (9), the person appointed to investigate the complaint or matter shall comply with any reasonable requirements as to the conduct of the investigation which may be imposed by the Commission as appear to it to be necessary.

(8) Where at any stage of an investigation of a complaint, recordable conduct matter or DSI matter the possibility of criminal proceedings arises, the Commission shall not, under paragraph (7), impose any requirement relating to the obtaining or preservation of evidence of a criminal offence without first obtaining the consent of the Director of Public Prosecutions.

(9) The Commission shall not, under paragraph (7), impose any requirement relating to the resources to be made available by the Director General for the purposes of an investigation without first consulting the Director General and having regard to any representations the Director General may make.

Investigations managed by the Commission

43.—(1) This regulation applies where the Commission has determined that it should manage the investigation by the appropriate authority of any complaint, recordable conduct matter or DSI matter.

(2) Paragraphs (2) to (6) of regulation 42 (investigations supervised by the Commission) shall apply as they apply in the case of an investigation which the Commission has determined is one that it should supervise.

(3) The person appointed to investigate the complaint or matter shall, in relation to that investigation, be under the direction and control of the Commission.

Investigations by the Commission itself

44.—(1) This regulation applies where the Commission has determined that it should itself carry out the investigation of a complaint or recordable conduct matter or DSI matter.

(2) The Commission shall designate both—

- (a) a member of the Commission's staff to take charge of the investigation on behalf of the Commission; and

- (b) all such other members of the Commission’s staff as are required by the Commission to assist that member.
- (3) A member of the Commission’s staff who—
 - (a) is designated under paragraph (2) in relation to any investigation; but
 - (b) does not already, by virtue of section 97(8) (police officers engaged on service outside their force) of the Police Act 1996(1) have all the powers and privileges of a constable throughout England and Wales and the adjacent United Kingdom waters,
 shall for the purposes of the carrying out of the investigation and all purposes connected with it, have all those powers and privileges throughout England and Wales and those waters.
- (4) A member of the Commission’s staff who is not a constable shall not, as a result of paragraph (3), be treated as being in police service for the purposes of—
 - (a) section 280 (police service) of the Trade Union and Labour Relations (Consolidation) Act 1992(2); or
 - (b) section 200 (police officers) of the Employment Rights Act 1996(3).
- (5) References in this regulation to the powers and privileges of a constable—
 - (a) are references to any power or privilege conferred by or under any enactment (including one passed after the making of these Regulations) on a constable; and
 - (b) shall have effect as if every such power were exercisable, and every such privilege existed, throughout England and Wales and the adjacent United Kingdom waters (whether or not that is the case apart from this paragraph).
- (6) In this regulation “United Kingdom waters” means the sea and other waters within the seaward limits of the United Kingdom’s territorial sea.

Combining and splitting investigations

- 45.**—(1) An appropriate authority which is carrying out an investigation on its own behalf may—
- (a) combine that investigation with another such investigation; or
 - (b) split that investigation into two or more such separate investigations,
- if it considers that it is more efficient and effective, or is otherwise in the public interest, to do so.
- (2) Subject to paragraph (3), where the Commission is supervising, managing or carrying out an investigation, it may—
- (a) combine that investigation with another investigation; or
 - (b) split that investigation into two or more separate investigations,
- if it considers that it is more efficient and effective, or is otherwise in the public interest, to do so.
- (3) The Commission shall not take any action under paragraph (2) in relation to a supervised or managed investigation except after consultation with the appropriate authority.
- (4) Nothing in this regulation shall prevent the Commission from determining that—
- (a) where an investigation is split into two or more separate investigations, those investigations may take different forms;
 - (b) two or more separate investigations which take different forms (including an investigation being carried out by the appropriate authority on its own behalf) may be combined into a single investigation.

(1) 1996 c.16.
 (2) 1992 c.52.
 (3) 1996 c.18.

Relinquishing the Commission's supervision or management of an investigation

- 46.**—(1) This regulation applies where the Commission relinquishes—
- (a) the management of an investigation in favour of a supervised investigation or an investigation by the appropriate authority on its own behalf; or
 - (b) the supervision of an investigation in favour of an investigation by the appropriate authority on its own behalf.
- (2) Where this regulation applies, and subject to paragraph (3), the Commission shall—
- (a) notify the appropriate authority, the complainant, any interested person within the meaning of regulation 14 (duty to provide information for other persons) and the person complained against of its decision, and the reasons for that decision; and
 - (b) send to the appropriate authority any documentation and evidence gathered during its investigations as will assist the appropriate authority to carry out its functions under these Regulations.
- (3) Nothing in paragraph (2)(a) shall require the Commission to make a notification to the person complained against if it is of the opinion that that might prejudice any criminal investigation or pending proceedings or would be contrary to the public interest.

Circumstances in which an investigation or other procedure may be suspended

- 47.**—(1) The Commission may suspend any investigation or other procedure under these Regulations which would, if it were to continue, prejudice any criminal investigation or proceedings.
- (2) An appropriate authority may, subject to paragraph (3), suspend any investigation or other procedure under these Regulations which would, if it were to continue, prejudice any criminal investigation or proceedings.
- (3) The Commission may direct that any investigation or other procedure under these Regulations which is liable to be suspended under paragraph (2) shall continue if it is of the view that it is in the public interest to make such a direction.
- (4) The Commission shall consult the appropriate authority before making such a direction.

Resumption of investigation after criminal proceedings

- 48.**—(1) Where the whole or part of the investigation of a complaint has been suspended until the conclusion of criminal proceedings, and the complainant has failed to indicate after the conclusion of those proceedings that the complainant wishes the investigation to start or be resumed, the Commission or, as the case may be, appropriate authority shall take the steps set out in paragraph (2).
- (2) The Commission or appropriate authority shall take all reasonable steps to contact the complainant to ascertain whether the complainant wants the investigation to start or be resumed as the case may be.
- (3) If the complainant indicates the wish for the investigation to start or be resumed, the Commission or appropriate authority shall start or resume the investigation as the case may be.
- (4) If the complainant indicates that the complainant does not want the investigation to start or be resumed, or if the complainant fails to reply within a period of 28 days commencing on the day after the date of a letter sent to the complainant by the Commission or appropriate authority, the Commission or appropriate authority as the case may be shall determine whether it is in the public interest for the complaint to be treated as a recordable conduct matter.
- (5) If the Commission or appropriate authority determines that it is not in the public interest for the complaint to be treated as a recordable conduct matter, the provisions of these Regulations shall cease to apply to the complaint.

(6) If the Commission or appropriate authority determines that it is in the public interest for the complaint to be treated as a recordable conduct matter, the provisions of these Regulations shall apply to the matter.

(7) Subject to paragraph (8), the Commission or appropriate authority shall notify the person complained against if paragraph (5) or (6) applies.

(8) Nothing in paragraph (7) shall require the Commission or appropriate authority to make a notification if it is of the opinion that that might prejudice any criminal investigation or pending proceedings or would be contrary to the public interest.

Special procedure: assessment of seriousness of conduct under investigation

49.—(1) If, during the course of an investigation of a complaint, it appears to the person investigating that there is an indication that a person to whose conduct the investigation relates may have—

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

the person investigating must certify the investigation as one subject to special requirements.

(2) If the person investigating a complaint certifies the investigation as one subject to special requirements, the person must, as soon as is reasonably practicable after doing so, make a severity assessment in relation to the conduct of the person concerned to which the investigation relates.

(3) The person investigating a recordable conduct matter must make a severity assessment in relation to the conduct to which the investigation relates—

- (a) as soon as is reasonably practicable after that person’s appointment or designation; or
- (b) in the case of a matter recorded in accordance with regulations 65(5) or 70(2), as soon as is reasonably practicable after it is so recorded.

(4) For the purposes of this regulation a “severity assessment”, in relation to conduct, means an assessment as to whether the conduct, if proved, would amount to misconduct or gross misconduct.

(5) An assessment under this regulation may only be made after consultation with the appropriate authority.

(6) On completing an assessment under this regulation, the person investigating the complaint or matter must give a notification to the person concerned that complies with paragraph (7).

(7) The notification must be in writing and state—

- (a) the conduct that is the subject matter of the allegation and how that conduct is alleged to fall below the NCA standards;
- (b) that there is to be an investigation into the matter and the identity of the investigator;
- (c) the investigator’s assessment of whether that conduct, if proved, would amount to misconduct or gross misconduct;
- (d) that the person concerned has the right to seek advice from the Trade Union or any other body representing the interests of the person concerned and of the effect of regulation 53(1) to (3); and
- (e) the effect of paragraph (8) and regulation 50 (duty to consider submissions from person whose conduct is being investigated).

(8) The person concerned or NCA friend shall have such a period as determined by the NCA, starting with the day after which the notice is given under paragraph (7) (unless this period is extended by the investigator) to provide any relevant statement or relevant document as the case may be.

(9) Paragraph (6) does not apply for so long as the person investigating the complaint or matter considers that giving the notification might prejudice—

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

(10) Where the person investigating a complaint or matter has made a severity assessment and considers it appropriate to do so, the person may revise the assessment.

(11) On revising a severity assessment, the person investigating the complaint or matter must, as soon as practicable, give the person concerned further written notice of the assessment of whether the conduct, if proved, would amount to misconduct or gross misconduct as the case may be and the reason for that assessment.

(12) The notice whether given in accordance with paragraph (6) or (11) shall be—

- (a) given to the person concerned in person;
- (b) left with some person at, or sent by recorded delivery to, the last known address of the person concerned; or
- (c) given to him in person by that person's NCA friend where the NCA friend has agreed with the appropriate authority to deliver the notice.

(13) In this regulation and regulations 50 to 53—

“the person concerned” means—

- (a) in relation to an investigation of a complaint, 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, the person to whose conduct the investigation relates;

“relevant document” means a document relating to any complaint or matter under investigation and includes such a document containing suggestions as to lines of inquiry to be pursued or witnesses to be interviewed;

“relevant statement” means an oral or written statement relating to any complaint or matter under investigation.

Duty to consider submissions from person whose conduct is being investigated

50.—(1) This paragraph applies to—

- (a) an investigation of a complaint that has been certified under regulation 49(1) as one subject to special requirements; or
- (b) an investigation of a recordable conduct matter.

(2) If before the expiry of the appropriate time limit notified in pursuance of regulation 49(8)—

- (a) the person concerned provides the person investigating the complaint or matter with a relevant statement or a relevant document; or
- (b) an NCA friend provides that person with a relevant document,

that person must consider the statement or document.

Interview of person whose conduct is being investigated

51.—(1) This paragraph applies to an investigation to which regulation 50(1)(a) or (b) applies.

(2) Where an investigator wishes to interview the person concerned as part of his investigation, he shall, if reasonably practicable, agree a date and time for the interview with the person concerned.

(3) Where no date and time is agreed under paragraph (1), the investigator shall specify a date and time for the interview.

(4) Where a date and time is specified under paragraph (2) and—

(a) the person concerned or that person's NCA friend will not be available at that time; and

(b) the person concerned proposes an alternative time which satisfies paragraph (5),

the interview shall be postponed to the time proposed by the person concerned.

(5) An alternative time must—

(a) be reasonable; and

(b) fall before the end of the period of 5 working days beginning with the first working day after the day specified by the investigator.

(6) The person concerned shall be given written notice of the date, time and place of the interview.

(7) The investigator shall, in advance of the interview, provide the person concerned with such information as the investigator considers appropriate in the circumstances of the case to enable the person concerned to prepare for the interview.

(8) The person concerned shall attend the interview.

(9) An NCA friend may not answer any questions asked of the person concerned during the interview.

Duty to provide certain information to appropriate authority

52.—(1) This paragraph applies during the course of an investigation to which regulation 50(1) (a) or (b) applies.

(2) The person investigating the complaint or matter must supply the appropriate authority with such information in that person's possession as the authority may reasonably request for the purpose mentioned in paragraph (3).

(3) That purpose is determining whether—

(a) the person concerned should be, or should remain, suspended from that person's appointment as an NCA officer; or

(b) in relation to a person who has been seconded to the NCA to serve as an NCA officer, the secondment of the person concerned should cease to have effect, or continue to cease to have effect.

NCA friend

53.—(1) The person concerned may choose—

(a) an NCA officer; or

(b) an official of a trade union,

who is not otherwise involved in the matter to act as that person's NCA friend.

(2) An NCA friend may—

(a) provide any relevant document to the investigator in accordance with regulation 50(2)(b);

(b) accompany the person concerned to any interview conducted under regulation 51;

(c) advise the person concerned throughout proceedings under these Regulations; and

(d) make representations to the Commission concerning any aspect of the proceedings under these Regulations.

Interview of the Director General or an NCA officer during certain investigations

54.—(1) This regulation applies to an investigation of a complaint, recordable conduct matter or DSI matter which—

- (a) is carried out by the appropriate authority under the management of the Commission; or
- (b) is carried out by the Commission itself.

(2) Paragraph (3) prescribes the procedure to be followed in connection with an interview which—

- (a) is held with the Director General or an NCA officer during the course of the investigation by the person investigating the complaint or matter; and
- (b) is not within regulation 51.

(3) Where a relevant investigator wishes to interview the Director General or an NCA officer as part of an investigation, the relevant investigator shall—

- (a) give written notice to the Director General or NCA officer that the interview will take place in accordance with this regulation; and
- (b) if reasonably practicable, agree a date and time for the interview with the Director General or NCA officer.

(4) Where no date and time is agreed under paragraph (3), the relevant investigator shall specify a date and time for the interview.

(5) Where a date and time is specified under paragraph (4) and—

- (a) the Director General, the NCA officer or the Director General's or NCA officer's accompanying person will not be available at that time; and
- (b) the Director General or NCA officer proposes an alternative time which satisfies paragraph (6),

the interview shall be postponed to the time proposed by the Director General or NCA officer.

(6) An alternative time must—

- (a) be reasonable; and
- (b) fall before the end of the period of 5 working days beginning with the first working day after the day specified by the relevant investigator.

(7) The Director General or NCA officer shall be given written notice of the date, time and place of the interview.

(8) The relevant investigator shall, in advance of the interview, provide the Director General or NCA officer with such information as the relevant investigator considers appropriate in the circumstances of the case to enable the serving officer to prepare for the interview.

(9) The Director General or NCA officer shall attend the interview.

(10) An accompanying person may not answer any questions asked of the Director General or NCA officer during the interview.

(11) Where an accompanying person is an NCA officer, the Director General shall permit the accompanying person to use a reasonable amount of duty time for the purposes of this regulation.

(12) Nothing in this regulation shall apply to an interview of any person—

- (a) in relation to an investigation of a complaint, in respect of whom it appears to the investigator that there is a relevant indication; or
- (b) in relation to an investigation of a recordable conduct matter, to whose conduct the investigation relates.

(13) Nothing in this regulation prevents or restricts the holding of interviews to which this regulation does not apply during the course of any investigation under these Regulations.

(14) In this regulation—

“accompanying person” means any person nominated by the NCA officer and who is not otherwise involved in the matter;

“relevant indication” means an indication that a person to whose conduct the investigation relates may have—

(a) committed a criminal offence; or

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

“relevant investigator” means a person appointed or designated to investigate under regulations 43 or 44.

Restrictions on proceedings pending the conclusion of an investigation

55.—(1) No criminal or disciplinary proceedings shall be brought in relation to any matter which is the subject of an investigation in accordance with the provisions of these Regulations until—

(a) the appropriate authority has certified the case as a special case under regulation 57(3) or 60(3); or

(b) a report on that investigation has been submitted to the Commission or to the appropriate authority under regulation 66 or 69.

(2) Nothing in this regulation shall prevent the bringing of criminal or disciplinary proceedings in respect of any conduct at any time after the discontinuance of the investigation in accordance with the provisions of these Regulations which relate to that conduct.

(3) The restrictions imposed by this regulation in relation to the bringing of criminal proceedings shall not apply to the bringing of criminal proceedings by the Director of Public Prosecutions in any case in which it appears to him that there are exceptional circumstances which make it undesirable to delay the bringing of such proceedings.

Accelerated procedure in special cases

56.—(1) If, at any time before the completion of the investigation, the person investigating a complaint or recordable conduct matter believes that the appropriate authority would, on consideration of the matter, be likely to consider that the special conditions are satisfied, the person shall proceed in accordance with the following provisions of this paragraph.

(2) If the person was appointed under regulation 41, the person shall submit to the appropriate authority—

(a) a statement of that person’s belief and the grounds for it; and

(b) a written report on the investigation to that point,

and if the person was appointed following a determination made by the Commission under regulation 38 he shall send a copy of the statement and the report to the Commission.

(3) If the person was appointed under regulation 42 or 43 or designated under regulation 44, the person shall submit to the appropriate authority—

(a) a statement of that person’s belief and the grounds for it; and

(b) a written report on the investigation to that point,

and shall send a copy of the statement and the report to the Commission.

(4) 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 the report as that person thinks fit.

(5) A statement and report may be submitted under this regulation whether or not a previous statement and report have been submitted, but a second or subsequent statement and report may be submitted only if the person submitting them has grounds to believe that the appropriate authority will reach a different determination under regulation 57(2) or 60(2).

(6) After submitting a report under this regulation, the person investigating the complaint or recordable conduct matter shall continue his investigation to such extent as that person considers appropriate.

(7) The special conditions are that—

- (a) there is sufficient evidence, in the form of written statements or other documents, to establish on the balance of probabilities that conduct to which the investigation relates constitutes gross misconduct; and
- (b) it is in the public interest for the person whose conduct it is to cease to be an NCA officer without delay.

(8) In regulations 57 to 62 “special report” means a report submitted under this regulation.

Investigations managed or carried out by Commission: action by appropriate authority

57.—(1) This regulation applies where—

- (a) a statement and special report on an investigation carried out under the management of the Commission; or
- (b) a statement and special report on an investigation carried out by a person designated by the Commission,

are submitted to the appropriate authority under regulation 56(3).

(2) The appropriate authority shall determine whether the special conditions are satisfied.

(3) If the appropriate authority determines that the special conditions are satisfied then, unless it considers that the circumstances are such as to make it inappropriate to do so, it shall—

- (a) certify the case as a special case for the purposes of procedures for the taking of disciplinary proceedings in respect of the conduct of the Director General or an NCA officer; and
- (b) take such steps as are required by those procedures in relation to a case so certified.

(4) The appropriate authority shall notify the Commission of a certification under paragraph (3).

(5) If the appropriate authority determines—

- (a) that the special conditions are not satisfied; or
- (b) that, although those conditions are satisfied, the circumstances are such as to make it inappropriate at present to bring disciplinary proceedings,

it shall submit to the Commission a memorandum under this paragraph.

(6) The memorandum required to be submitted under paragraph (5) is one which—

- (a) notifies the Commission of its determination that those conditions are not satisfied or (as the case may be) that they are so satisfied but the circumstances are such as to make it inappropriate at present to bring disciplinary proceedings; and
- (b) (in either case) sets out its reasons for so determining.

(7) In this regulation “special conditions” has the meaning given by regulation 56(7).

Investigations managed or carried out by Commission: action by Commission

58.—(1) On receipt of a notification under regulation 57(4), the Commission 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 14; 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 that regulation.

(2) The notification required by paragraph (1) is one setting out—

- (a) the findings of the special report;
- (b) the appropriate authority's determination under regulation 57(2); and
- (c) the action that the appropriate authority is required to take as a consequence of that determination.

(3) Regulation 16 (exceptions to the duty to keep the complainant informed and to provide information for other persons) shall have effect in relation to the duties imposed on the Commission by paragraph (1) as they have effect in relation to the duties imposed on the Commission by that regulation.

(4) Except so far as may be otherwise prohibited by regulation 16, the Commission 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 (1) notification of the findings of the special report by sending that person a copy of that report.

59.—(1) On receipt of a memorandum under regulation 57(5), the Commission shall—

- (a) consider the memorandum;
- (b) determine, in the light of that consideration, whether or not to make a recommendation under regulation 62; and
- (c) if it thinks fit to do so, make a recommendation under that regulation.

(2) If the Commission determines not to make a recommendation under regulation 62, it shall notify the appropriate authority and the person investigating the complaint or matter of its determination.

Other investigations: action by appropriate authority

60.—(1) This paragraph applies where—

- (a) a statement and a special report on an investigation carried out by an appropriate authority on its own behalf; or
- (b) a statement and a special report on an investigation carried out under the supervision of the Commission,

are submitted to the appropriate authority under regulation 56(2) or (3).

(2) The appropriate authority shall determine whether the special conditions are satisfied.

(3) If the appropriate authority determines that the special conditions are satisfied then, unless it considers that the circumstances are such as to make it inappropriate to do so, it shall—

- (a) certify the case as a special case for the purposes of procedures for the taking of disciplinary proceedings in respect of the conduct of the Director General or an NCA officer; and
- (b) take such steps as are required by those procedures in relation to a case so certified.

(4) Where the statement and report were required under regulation 56(2) to be copied to the Commission, the appropriate authority shall notify the Commission of a certification under paragraph (3).

(5) If the appropriate authority determines—

(a) that the special conditions are not satisfied; or

(b) that, although those conditions are satisfied, the circumstances are such as to make it inappropriate at present to bring disciplinary proceedings,

it shall notify the person investigating the complaint or matter of its determination.

(6) In this regulation “special conditions” has the meaning given by regulation 56(7).

61.—(1) If the appropriate authority certifies a case under regulation 60(3), it 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 14; 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 that regulation.

(2) The notification required by paragraph (1) is one setting out—

(a) the findings of the report;

(b) the authority’s determination under regulation 60(2); and

(c) the action that the authority is required to take in consequence of that determination.

(3) Regulation 16 (exceptions to the duty to keep the complainant informed and to provide information for other persons) shall have effect in relation to the duties imposed on the appropriate authority by paragraph (1) as they have effect in relation to the duties imposed on the appropriate authority by that regulation.

(4) Except so far as may be otherwise prohibited by regulation 16, the 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 (1) notification of the findings of the special report by sending that person a copy of that report.

Special cases: recommendation or direction of Commission

62.—(1) Where the appropriate authority has submitted, or is required to submit, a memorandum to the Commission under regulation 57(5), the Commission may make a recommendation to the appropriate authority that it should certify the case under regulation 57(3).

(2) If the Commission determines to make a recommendation under this regulation, it 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 14; 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 that regulation.

(3) The notification required by paragraph (2) is one setting out—

(a) the findings of the special report; and

(b) the Commission’s recommendation under this regulation.

(4) Regulation 16 (exceptions to the duty to keep the complainant informed and to provide information for other persons) shall have effect in relation to the duties imposed on the Commission

by paragraph (2) as they have effect in relation to the duties imposed on the Commission by that regulation.

(5) Except so far as may be otherwise prohibited by regulation 16, the Commission 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 (2) notification of the findings of the special report by sending that person a copy of the report.

(6) It shall be the duty of the appropriate authority to notify the Commission whether it accepts the recommendation and (if it does) to certify the case and proceed accordingly.

(7) If, after the Commission has made a recommendation under this regulation, the appropriate authority does not certify the case under regulation 57(3)—

- (a) the Commission may direct the appropriate authority so to certify it; and
- (b) it shall be the duty of the appropriate authority to comply with any such direction and proceed accordingly.

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

(9) The Commission may at any time withdraw a direction given under this regulation.

(10) The appropriate authority shall keep the Commission informed of whatever action it takes in response to a recommendation or direction.

63.—(1) Where—

- (a) the Commission makes a recommendation under regulation 62 in the case of an investigation of a complaint; and
- (b) the appropriate authority notifies the Commission that the recommendation has been accepted,

the Commission shall notify the complainant and every person entitled to be kept properly informed in relation to the complaint under regulation 14 of that fact and of the steps that have been, or are to be, taken by the appropriate authority to give effect to it.

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

- (a) notifies the Commission that it does not accept the recommendation made by the Commission under regulation 62; or
- (b) fails to certify the case under 57(3) and to proceed accordingly,

it shall be the duty of the Commission to determine what (if any) further steps to take under regulation 62.

(3) It shall be the duty of the Commission to notify the complainant and every person entitled to be kept properly informed in relation to the complaint under regulation 14—

- (a) of any determination under paragraph (2) not to take further steps under regulation 62; and
- (b) where it determines under that paragraph to take further steps under that paragraph, of the outcome of the taking of those steps.

Power to discontinue an investigation

64.—(1) The Commission may by order require the discontinuance of the investigation of a complaint or matter if (whether on the application of the appropriate authority or otherwise) it appears to the Commission that—

- (a) the complaint or matter is of a description specified in paragraph (9); and
- (b) discontinuance of the investigation is within the Commission's power.

- (2) The appropriate authority that is investigating a complaint or matter may discontinue the investigation if it appears to that authority that—
 - (a) the complaint or matter is of a description specified in paragraph (9); and
 - (b) discontinuance of the investigation is not within the Commission’s power.
- (3) Before discontinuing an investigation or applying to the Commission for an order requiring the discontinuance of an investigation, an appropriate authority shall—
 - (a) write to the complainant at his 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.
- (4) Any application by an appropriate authority to the Commission for an order that it discontinue an investigation shall be in writing and shall be accompanied by—
 - (a) a copy of the complaint; and
 - (b) a memorandum from the appropriate authority containing a summary of the investigation undertaken so far and explaining the reasons for the application to discontinue the investigation.
- (5) The appropriate authority shall—
 - (a) send the complainant a copy of any such application on the same day as the day on which the application is sent to the Commission; and
 - (b) supply any further information requested by the Commission for the purpose of considering that application.
- (6) The Commission shall not require the discontinuance of an investigation in a case where there has been no application to do so by the appropriate authority unless it has consulted with that authority.
- (7) Before requiring the discontinuance of an investigation under paragraph (1) in a case where there has been no application to do so by the appropriate authority, or discontinuing an investigation itself under paragraph (12), the Commission shall—
 - (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.
- (8) For the purposes of this paragraph—
 - (a) discontinuance of the investigation of a complaint is within the Commission’s power if—
 - (i) the investigation is being undertaken by the appropriate authority on its own behalf and the complaint is one required to be referred to the Commission under regulation 22; or
 - (ii) the investigation is under the supervision or management of the Commission;
 - (b) discontinuance of the investigation of a matter other than a complaint is within the Commission’s power if the investigation is under the supervision or management of the Commission.
- (9) For the purposes of paragraphs (1) and (2), a specified complaint or matter is one—

- (a) in which the complainant refuses to co-operate to the extent that the relevant body considers that it is not reasonably practicable to continue the investigation;
 - (b) which the appropriate authority has determined is suitable for local resolution;
 - (c) which the relevant body considers is vexatious, oppressive or otherwise an abuse of the procedures for dealing with complaints, conduct matters or DSI matters;
 - (d) which is repetitive, as defined in regulation 20(3) or 30; or
 - (e) which the relevant body otherwise considers is such as to make it not reasonably practicable to proceed with the investigation.
- (10) For the purposes of paragraph (9) “relevant body” means—
- (a) the Commission, in a case where discontinuance is within the Commission’s power in accordance with paragraph (8); and
 - (b) the appropriate authority, in any other case.
- (11) The Commission shall not discontinue any investigation that is being carried out in accordance with regulation 44 except in any cases where the complaint, conduct matter or DSI matter under investigation falls within paragraph (9).
- (12) Where the Commission makes an order under this regulation or discontinues an investigation being carried out in accordance with regulation 44, it shall give notification of the discontinuance—
- (a) to the appropriate authority;
 - (b) to every person entitled to be kept properly informed in relation to the subject matter of the investigation under regulation 14; and
 - (c) in a case where the investigation that is discontinued is an investigation of a complaint, to the complainant.
- (13) Where the appropriate authority discontinues an investigation under paragraph (2), the appropriate authority shall give notification of the discontinuance—
- (a) to every person entitled to be kept properly informed in relation to the investigation under regulation 14; and
 - (b) in a case where the investigation that is discontinued is an investigation of a complaint, to the complainant.
- (14) Where an investigation of a complaint, recordable conduct matter or DSI matter is discontinued in accordance with an order under paragraph (1)—
- (a) the Commission may give the appropriate authority directions in accordance with paragraph (15);
 - (b) the Commission may itself take any such steps of a description specified in paragraph (18) (with the exception of the step in paragraph (18)(c)) as it considers appropriate for purposes connected with the discontinuance of the investigation; and
 - (c) subject to the preceding paragraphs, neither the appropriate authority nor the Commission shall take any further action in accordance with the provisions of these Regulations in relation to that complaint or matter.
- (15) A direction given to an appropriate authority by the Commission under paragraph (14)(a) may—
- (a) require the appropriate authority to produce an investigation report on the discontinued investigation under regulation 66 and to take any subsequent steps under these Regulations;
 - (b) where the investigation concerned a complaint, require the appropriate authority to disapply the requirements of these Regulations as respects that complaint;

- (c) in a case within paragraph (9)(b), require the appropriate authority to subject the complaint to local resolution;
 - (d) direct the appropriate authority to handle the matter in whatever manner (if any) that authority thinks fit.
- (16) The appropriate authority shall comply with any directions given to it under paragraph (15).
- (17) Where an investigation of a complaint, recordable conduct matter or DSI matter is discontinued in accordance with paragraph (2)—
- (a) the appropriate authority may take any such steps of a description specified in paragraph (18) it considers appropriate for purposes connected with the discontinuance of the investigation; and
 - (b) subject to the preceding paragraphs, neither the appropriate authority nor the Commission shall take any further action in accordance with the provisions of these Regulations in relation to that complaint or matter.
- (18) For the purposes of paragraphs (14)(b) and (17)(a), the steps are—
- (a) to produce an investigation report on the discontinued investigation and take any subsequent steps under these Regulations;
 - (b) where the investigation concerned a complaint, to disapply the requirements of these Regulations as respects that complaint;
 - (c) to subject the complaint to local resolution;
 - (d) to handle the matter in whatever manner the appropriate authority or (as the case may be) the Commission thinks fit.
- (19) The complainant shall have a right of appeal to the relevant appeal body against any decision by the appropriate authority under paragraph (2) to discontinue the investigation of the complaint.
- (20) On an appeal under this regulation, subject to paragraphs (21) and (22), the relevant appeal body shall—
- (a) determine whether any decision taken by the appropriate authority under this regulation should have been taken in the case in question; and
 - (b) if the relevant appeal body finds in the complainant's favour, give such directions as the relevant appeal body thinks appropriate to the Permanent Secretary to the Home Office and the Director General as to the action to be taken for investigating the complaint;
- and it shall be the duty of the Permanent Secretary to the Home Office and the Director General to comply with any directions given under paragraph (b).
- (21) Paragraph (20) does not apply in a case where the Director General is—
- (a) the person in respect of whose decision an appeal is made under this regulation, and
 - (b) the relevant appeal body in relation to the appeal.
- (22) In such a case—
- (a) the appeal shall determine whether any decision taken by the appropriate authority under this paragraph should have been taken in the case in question; and
 - (b) if the appeal finds in the complainant's favour, the Director General must take such action as the Director General thinks appropriate for investigating the complaint.

Procedure where conduct matter is revealed during investigation of DSI matter

65.—(1) If during the course of an investigation of a DSI matter it appears to a person appointed under regulation 43 or designated under regulation 44 that there is an indication that the Director General or an NCA officer (“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 appointed or designated person shall make a submission to that effect to the Commission.
- (2) If, after considering a submission under paragraph (1), the Commission determines that there is such an indication, it shall—
- (a) notify the appropriate authority in relation to the DSI matter and (if different) the appropriate authority in relation to the person whose conduct is in question of its determination; and
 - (b) send to it (or each of them) a copy of the submission under paragraph (1).
- (3) If during the course of an investigation of a DSI matter it appears to a person appointed under regulation 41 or 42 that there is an indication that the Director General or an NCA officer (“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 appointed person shall make a submission to that effect to the appropriate authority in relation to the DSI matter.
- (4) If, after considering a submission under paragraph (3), the appropriate authority determines that there is such an indication, it shall—
- (a) if it is not the appropriate authority in relation to the person whose conduct is in question, notify that other authority of its determination and send to that authority a copy of the submission under paragraph (3); and
 - (b) notify the Commission of its determination and send to it a copy of the submission under paragraph (3).
- (5) Where the appropriate authority in relation to the person whose conduct is in question—
- (a) is notified of a determination by the Commission under paragraph (2);
 - (b) (in a case where it is also the appropriate authority in relation to the DSI matter) makes a determination under paragraph (4); or
 - (c) (in a case where it is not the appropriate authority in relation to the DSI matter) is notified by that other authority of a determination by it under paragraph (4),
- it shall record the matter under regulation 29 as a conduct matter.
- (6) Where a DSI matter is recorded under regulation 29 as a conduct matter by virtue of paragraph (5)—
- (a) the person investigating the DSI matter shall (subject to any determination made by the Commission under regulation 38(5)) continue the investigation as if appointed or designated to investigate the conduct matter; and
 - (b) the other provisions of these Regulations shall apply in relation to that matter accordingly.