

*Draft Regulations laid before Parliament under section 373(3) of the Armed Forces Act 2006, for approval by resolution of each House of Parliament.*

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## DRAFT STATUTORY INSTRUMENTS

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**2023 No. 0000**

## **DEFENCE**

### The Service Police (Complaints etc.) Regulations 2023

*Made* - - - - **\*\*\***  
*Coming into force* - - *19th June 2023*

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 340P, 340R and 373(5) of the Armed Forces Act 2006(1).

In accordance with section 373(3) of the Armed Forces Act 2006, a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

## PART 1

### Introductory

#### **Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Service Police (Complaints etc.) Regulations 2023 and come into force on 19th June 2023.

(2) These Regulations extend to the United Kingdom, the Isle of Man, and the British overseas territories except Gibraltar, subject to paragraph (3).

(3) An amendment made by these Regulations has the same extent as the provision being amended.

#### **Interpretation**

2.—(1) In these Regulations—

“the 1996 Act” means the Police Act 1996(2);

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- (1) [2006 c. 52](#). Section 11 of the Armed Forces Act [2021 \(c. 35\)](#) (“the 2021 Act”) inserted sections 340P and 340R into the Armed Forces Act 2006 (“the 2006 Act”) as part of the new Part 14B. That section also inserted section 365BA (Service Police Complaints Commissioner) and section 365BB (investigating officers). Schedule 4 to the 2021 Act makes further provision in relation to the Service Police Complaints Commissioner. There are other amendments to the 2006 Act which are not relevant to these Regulations.
- (2) [1996 c. 16](#).

“the 2006 Act” means the Armed Forces Act 2006;

“administrative action procedures” means the procedures and processes under which the conduct of a member of a service police force<sup>(3)</sup> is considered in order to determine whether it is misconduct or gross misconduct, and if so whether as a result any administrative action is to be taken in relation to it;

“appropriate authority” has the meaning given by paragraph (2);

“the appropriate prosecutor” means the person that a service policeman would have been under a duty to refer the case to under section 116 of the 2006 Act<sup>(4)</sup> had it been investigated by a service police force;

“Board” means—

- (a) the Admiralty Board in relation to the Royal Navy Police;
- (b) the Army Board in relation to the Royal Military Police;
- (c) the Royal Air Force Board in relation to the Royal Air Force Police;

and reference to “the Boards” are to be construed accordingly;

“the Chief Inspector” means His Majesty’s Chief Inspector of Constabulary<sup>(5)</sup>;

“the Commissioner” means the Service Police Complaints Commissioner<sup>(6)</sup>;

“complainant” is to be construed in accordance with regulation 9;

“complaint” has the meaning given by regulation 9;

“conduct” includes acts, omissions, statements and decisions (whether actual, alleged or inferred);

“conduct matter” has the meaning given by regulation 9;

“criminal intelligence” includes intelligence produced for purposes connected with the prevention, detection or investigation of service offences;

“death or serious injury matter” and “DSI matter” have the meaning given by regulation 9;

“disciplinary proceedings” means proceedings in relation to a service offence<sup>(7)</sup>;

“document” means anything in which information of any description is recorded;

“gross misconduct” means a breach of the professional standards that is so serious as to justify termination of a person’s membership of the relevant service police force;

“information” includes estimates and projections, and statistical analyses;

“interested person” means a person who has an interest in being kept properly informed about the handling of a complaint, conduct matter or DSI matter;

“misconduct” means a breach of the professional standards;

“person complained against”, in relation to a complaint that relates to conduct of a member of a service police force, means the person whose conduct is the subject-matter of the complaint;

“the person concerned”—

- (a) in relation to an investigation of a complaint, means—
  - (i) the member of a service police force in respect of whom it appears to the person investigating or, in the case of an investigation by a designated person

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(3) See section 375(1) of the 2006 Act for the meaning of “service police force”.

(4) Section 116 has been amended by paragraph 5(1) of Schedule 3 to the Armed Forces Act 2011 (c. 18), section 3 of the Armed Forces Act 2016 (c. 21) and paragraph 29 of Schedule 5 to the 2021 Act.

(5) Section 54(1) of the Police Act 1996 Act (“1996 Act”) makes provision for one of the inspectors of constabulary to be appointed as chief inspector of constabulary.

(6) The Service Police Complaints Commissioner is established by section 365BA of the 2006 Act.

(7) See section 50(2) of the 2006 Act for the meaning of “service offence”.

under regulation 36, the Commissioner, that there is the indication mentioned in regulation 46(3)(b); or

(ii) the member of a service police force in respect of whom the Commissioner determines that there is the indication mentioned in regulation 46(3)(b);

(b) in relation to an investigation of a recordable conduct matter, means the member of a service police force to whose conduct the investigation relates;

“the person investigating”, in relation to a complaint, recordable conduct matter or DSI matter, means the person appointed or designated to investigate that complaint or matter;

“the professional standards” means the values and standards that a member of a service police force is required to comply with under the policies that apply to members of the service police force of which that person is a member;

“recordable conduct matter” means a conduct matter that is required to be recorded by the appropriate authority under regulation 21, 22 or 25 or has been so recorded;

“the relevant officer” is to be construed in accordance with paragraphs (3) and (4);

“relevant service offence” means an offence under section 42 of the 2006 Act for which—

(a) the sentence is fixed by law; or

(b) a person of 18 years or over (not previously convicted) may be sentenced to imprisonment for a term of seven years or more or might be so sentenced;

“relevant review body” is to be construed in accordance with paragraph (5);

“senior officer” means a member of a service police force holding a rank of, or above that of—

(a) Lieutenant Commander in relation to the Royal Navy Police;

(b) Major in relation to the Royal Military Police; or

(c) Squadron Leader in relation to the Royal Air Force Police;

“serious injury” means a fracture, a deep cut, a deep laceration or an injury causing damage to an internal organ or the impairment of any bodily function;

“severity assessment” means, in relation to conduct, an assessment as to whether the conduct, if proven, would amount to misconduct that is so serious as to justify the initiation of administrative action procedures, or to gross misconduct;

“working day” means any day other than a Saturday or Sunday or a day which is a public holiday in any part of the United Kingdom.

(2) “Appropriate authority”—

(a) in relation to a member of a service police force means—

(i) if that person is the Provost Marshal for serious crime, the Defence Council;

(ii) if that person is a Provost Marshal of a service police force, the Board for that force; and

(iii) if that person is not a Provost Marshal, the Provost Marshal of the service police force of which that person is a member;

(b) in relation to a complaint, conduct matter or investigation relating to the conduct of a member of a service police force, means—

(i) if that person is the Provost Marshal for serious crime, the Defence Council;

(ii) if that person is a Provost Marshal of a service police force, the Board for that force; and

(iii) if that person is not a Provost Marshal, the Provost Marshal under whose direction that person came at the time of the alleged conduct;

- (c) in relation to any other complaint, means—
- (i) where the complaint relates to the tri-service serious crime unit, the Provost Marshal for serious crime; or
  - (ii) where the complaint relates to a service police force, the Provost Marshal of that service police force;
- (d) in relation to a death or serious injury matter, means—
- (i) if the relevant officer is the Provost Marshal for serious crime, the Defence Council;
  - (ii) if the relevant officer is a Provost Marshal of a service police force, the Board for that force;
  - (iii) if the relevant officer is not a Provost Marshal, the Provost Marshal under whose direction that person comes.
- (3) “The relevant officer”, in relation to a death or serious injury matter, means the member of a service police force—
- (a) who arrested the person who has died or suffered serious injury;
  - (b) in whose custody that person was at the time of the death or serious injury; or
  - (c) with whom that person had the contact in question,
- and where there is more than one member of a service police force involved it means, subject to paragraph (4), the member who so dealt with that person last before the death or serious injury occurred.
- (4) Where it cannot be determined which of two or more members of a service police force dealt with a person last before the death or serious injury occurred, the relevant officer is the most senior of them.
- (5) “Relevant review body”, in relation to a review of the outcome of a complaint (under regulation 18(2) or 64(1)), means—
- (a) the Commissioner—
    - (i) where the Defence Council, or the Board for the service police force, is the appropriate authority in relation to the complaint; or
    - (ii) in relation to any complaint—
      - (aa) concerning the conduct of a senior officer;
      - (bb) where the appropriate authority is unable to satisfy itself, from the complaint alone, that the conduct complained of (if it were proved) would not justify the bringing of disciplinary proceedings or initiation of administrative action procedures against a member of a service police force;
      - (cc) where the appropriate authority is unable to satisfy itself, from the complaint alone, that the conduct complained of (if it were proved) would not involve an infringement of a person’s rights under Article 2 or 3 of the Convention (within the meaning of the Human Rights Act 1998<sup>(8)</sup>);
      - (dd) that has been, or must be, referred to the Commissioner under regulation 13;
      - (ee) that the Commissioner is treating as having been referred to the Commissioner under regulation 14(1);
      - (ff) arising from the same incident as a complaint to which any of sub-paragraphs (aa) to (ee) applies;
      - (gg) to any part of which any of sub-paragraphs (aa) to (ff) applies;

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(8) 1998 c. 42.

- (b) in the case of a complaint not falling within sub-paragraph (a)—
  - (i) the Defence Council, where the Provost Marshal for serious crime is the appropriate authority for the complaint;
  - (ii) the Board for the relevant service police force, where the Provost Marshal of that force is the appropriate authority for the complaint.

## PART 2

### The Service Police Complaints Commissioner

#### General functions of the Commissioner

- 3.—(1) The functions of the Commissioner are—
- (a) to secure the maintenance by the Commissioner, the Defence Council, the Boards and the Provost Marshals of suitable arrangements with respect to the matters mentioned in paragraph (2);
  - (b) to keep under review all arrangements maintained with respect to those matters;
  - (c) to secure that arrangements maintained with respect to those matters comply with the requirements of the provisions of Part 3, are efficient and effective and contain and manifest an appropriate degree of independence;
  - (d) to secure that the confidence of persons subject to service law<sup>(9)</sup> and civilians subject to service discipline<sup>(10)</sup> as well as public confidence, is established and maintained in the existence of suitable arrangements with respect to those matters and with the operation of the arrangements that are in fact maintained with respect to those matters;
  - (e) to make such recommendations, and to give such advice, for the modification of the arrangements maintained with respect to those matters, and also of service police practice in relation to other matters, as appear, from the carrying out by the Commissioner of the Commissioner’s other functions, to be necessary or desirable.
- (2) Those matters are—
- (a) the handling of complaints within the meaning given by regulation 9;
  - (b) the recording of matters from which it appears that there may have been conduct by a member of a service police force which constitutes or involves the commission of a service offence or behaviour that would justify the initiation of administrative action procedures;
  - (c) the recording of matters from which it appears that a person has died or suffered serious injury during, or following, contact with a member of a service police force;
  - (d) the manner in which any such complaints or any such matters as are mentioned in sub-paragraph (b) or (c) are investigated or otherwise handled and dealt with.
- (3) The Commissioner also has functions conferred on the Commissioner by Part 4 in relation to super-complaints.
- (4) The Commissioner must—
- (a) exercise the powers and perform the duties conferred on the Commissioner by this Part and Part 3 in the manner that the Commissioner considers best calculated for the purpose of securing the proper carrying out of the Commissioner’s functions under paragraph (1) of this regulation; and

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<sup>(9)</sup> See section 367 of the 2006 Act for the meaning of “persons subject to service law”.

<sup>(10)</sup> See section 370 of the 2006 Act for the meaning of “civilian subject to service discipline”.

(b) secure that arrangements exist which are conducive to, and facilitate, the reporting of misconduct by a member of a service police force.

(5) Subject to the other provisions of these Regulations, the Commissioner may do anything which appears to the Commissioner to be calculated to facilitate, or is incidental or conducive to, the carrying out of the Commissioner's functions.

#### **Cooperation between the Commissioner and the Chief Inspector of Constabulary**

4. The Commissioner and the Chief Inspector must—

(a) enter into arrangements with one another for the purpose of securing cooperation, in the carrying out of their respective functions, between the Commissioner and the inspectors of constabulary<sup>(11)</sup>; and

(b) ensure that the inspectors of constabulary provide the Commissioner, and the Commissioner provides the inspectors, with all such assistance and co-operation as may be required by those arrangements, or as otherwise appears to the Commissioner and the Chief Inspector to be appropriate for facilitating the carrying out of their respective functions.

#### **Efficiency etc. in exercise of functions**

5. The Commissioner must carry out the Commissioner's functions efficiently and effectively.

#### **Strategy for exercise of functions**

6.—(1) The Commissioner must—

(a) prepare a strategy for the carrying out of the Commissioner's functions; and

(b) review the strategy (and revise it as appropriate) at least once every 12 months.

(2) The strategy must set out how the Commissioner proposes to carry out those functions in the relevant period.

(3) The strategy must also include a plan for the use, during the relevant period, of resources for the carrying out of the Commissioner's functions.

(4) The Commissioner must give effect to the strategy in carrying out those functions.

(5) The Commissioner must publish a strategy (or revised strategy) prepared under this regulation (stating the time from which it takes effect).

(6) In this regulation "relevant period", in relation to a strategy, means the period of time that is covered by the strategy.

#### **Reports to the Secretary of State**

7.—(1) As soon as practicable after the end of each calendar year, the Commissioner must make a report to the Secretary of State on the carrying out of the Commissioner's functions during that year.

(2) The Secretary of State may also, at any time, require the Commissioner to make a report on the carrying out of the Commissioner's functions.

(3) The Commissioner may, from time to time, make such other reports to the Secretary of State as the Commissioner considers appropriate for drawing the Secretary of State's attention to matters which—

(a) have come to the Commissioner's notice; and

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(11) Inspectors of constabulary are persons appointed under section 54(1) of the 1996 Act.

- (b) are matters which the Commissioner considers should be drawn to the attention of the Secretary of State by reason of their gravity or other exceptional circumstances.
- (4) The Commissioner must prepare such reports containing advice and recommendations as the Commissioner thinks appropriate for the purpose of carrying out the Commissioner’s function under regulation 3(1)(e).
- (5) Where the Secretary of State receives any report under this regulation, the Secretary of State must—
- (a) in the case of every annual report under paragraph (1); and
  - (b) in the case of any other report, if and to the extent that the Secretary of State considers it appropriate to do so,
- lay a copy of the report before Parliament and cause the report to be published.
- (6) The Commissioner must send a copy of every annual report under paragraph (1) to the Defence Council and the Boards.
- (7) The Commissioner must send a copy of every report under paragraph (3)—
- (a) to the Defence Council or the Board that appears to the Commissioner to be concerned; and
  - (b) to the Provost Marshal that appears to the Commissioner to be concerned.
- (8) The Commissioner must send a copy of every report under paragraph (4) to—
- (a) the Secretary of State;
  - (b) the Defence Council;
  - (c) the Boards;
  - (d) the Provost Marshals.
- (9) The Commissioner must send a copy of every report made or prepared by the Commissioner under paragraph (3) or (4) to such of the persons (in addition to those specified in the preceding paragraphs) who—
- (a) are referred to in the report; or
  - (b) appear to the Commissioner otherwise to have a particular interest in its contents,
- as the Commissioner thinks fit.

## PART 3

### Complaints etc.

#### CHAPTER 1

##### General

#### **Application of this Part**

**8.—**(1) This Part applies to matters relating to the service police forces and the tri-service serious crime(12) unit that occur on or after these Regulations come into force.

(2) This Part does not apply in relation to a member of the regular or reserve forces who was acting in the course of his or her duties otherwise than as a member of a service police force when the matter occurred.

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(12) See section 375(1A) of the 2006 Act for the meaning of “tri-service serious crime unit”.

### **Complaints, matters and persons to which this Part applies**

9.—(1) In these Regulations, references to a complaint are references (subject to the following provisions of this regulation) to any expression of dissatisfaction with a service police force or the tri-service serious crime unit which is expressed (whether in writing or otherwise) by or on behalf of any person.

(2) But an expression of dissatisfaction is only a complaint for the purposes of these Regulations—

- (a) where the expression of dissatisfaction relates to conduct of a member of a service police force, if the person is a person falling within paragraph (3);
- (b) in any other case, if the person has been adversely affected by the matter about which dissatisfaction is expressed.

(3) In relation to an expression of dissatisfaction that relates to conduct of a member of a service police force, a person falls within this paragraph if the person is—

- (a) a person who claims to be the person in relation to whom the conduct took place;
- (b) a person not falling within sub-paragraph (a) who claims to have been adversely affected by the conduct; or
- (c) a person who claims to have witnessed the conduct.

(4) In these Regulations, “conduct matter” means (subject to the following provisions of this regulation) any matter which is not and has not been the subject of a complaint but in the case of which there is an indication (whether from the circumstances or otherwise) that a member of a service police force may have—

- (a) committed a service offence; or
- (b) behaved in a manner that would justify the initiation of administrative action procedures.

(5) The complaints that are complaints for the purposes of these Regulations by virtue of paragraph (3)(b) do not, except in a case falling within paragraph (6), include any complaint where the person expressing dissatisfaction or the person on whose behalf dissatisfaction is being expressed, claims to have been adversely affected as a consequence only of having seen or heard the conduct, or any of the alleged effects of the conduct.

(6) A case falls within this paragraph if —

- (a) it was only because the person expressing dissatisfaction or the person on whose behalf dissatisfaction is being expressed was physically present, or sufficiently nearby, when the conduct took place or the effects occurred that the person was able to see or hear the conduct or its effects; or
- (b) the adverse effect is attributable to, or was aggravated by, the fact that the person in relation to whom the conduct took place was already known to the person claiming to have suffered the adverse effect.

(7) For the purposes of this regulation, a person is taken to have witnessed conduct if, and only if—

- (a) that person acquired knowledge of that conduct in a manner which would make that person a competent witness capable of giving admissible evidence of that conduct in proceedings before a Court Martial; or
- (b) that person has in their possession or under their control anything which would in any such proceedings constitute admissible evidence of that conduct.

(8) For the purposes of this Part, a person is not to be taken to have authorised another person to make a complaint on that person’s behalf unless—



- (a) that other person is for the time being designated for the purposes of this Part by the Commissioner as a person through whom complaints may be made, or that other person is of a description of persons so designated; or
- (b) the other person has been given, and is able to produce, the written consent to that person so acting of the person on whose behalf they act.

(9) References in these Regulations, in relation to anything which is or purports to be a complaint, to the complainant are references—

- (a) to the person by whom the complaint or purported complaint was made; or
- (b) in a case where the complaint or purported complaint was made on behalf of someone else, to the person on whose behalf it was made;

but where any person is acting on another's behalf for the purposes of any complaint or purported complaint, anything that is to be or may be done under this Part or in relation to the complainant may be done instead by or in relation to the person acting on the complainant's behalf.

(10) In relation to any conduct or to anything purporting to be a complaint about any conduct, references to a person in this Part do not include—

- (a) a person who, at the time when the conduct is supposed to have taken place, was under the direction of the same Provost Marshal as the person whose conduct is in question; or
- (b) a person who was on duty in their capacity as a member of a service police force—
  - (i) at the time when the conduct is supposed to have taken place in relation to that person; or
  - (ii) at the time when that person is supposed to have been adversely affected by it or to have witnessed it.

(11) In relation to anything purporting to be a complaint other than a complaint about any conduct, references to a person in this Part include a member of a service police force other than a person—

- (a) who is a member of the service police force with which dissatisfaction is expressed; or
- (b) where the dissatisfaction is expressed in relation to the tri-service serious crime unit, was a member of the tri-service serious crime unit at the time the matter the complaint relates to occurred.

(12) For the purposes of this Part, a person is adversely affected if that person suffers any form of loss or damage, distress or inconvenience, if that person is put in danger or if that person is otherwise unduly put at risk of being adversely affected.

(13) References in this Part to the investigation of any complaint or matter by the appropriate authority on its own behalf, under the direction of the Commissioner or by the Commissioner, are to be construed as references to its investigation in accordance with regulation 33, 34 or 36 as the case may be.

(14) In these Regulations, “death or serious injury matter” (or “DSI matter”) means any circumstances (other than those which are or have been the subject of a complaint or which amount to a conduct matter)—

- (a) in or in consequence of which a person has died or has sustained serious injury; and
- (b) in relation to which the requirements of paragraph (15) or (16) are satisfied.

(15) The requirements of this paragraph are that at the time of the death or serious injury the person—

- (a) had been arrested by a member of a service police force and had not been released from that arrest; or
- (b) was otherwise detained in the custody of a member of a service police force.

(16) The requirements of this paragraph are that—

- (a) at or before the time of the death or serious injury the person has contact (of whatever kind, and whether direct or indirect) with a member of a service police force who was acting in the execution of their duties as a member of such a force; and
- (b) there is an indication that the contact may have caused (whether directly or indirectly) or contributed to the death or serious injury.

(17) In paragraph (14) the reference to a person includes a member of a service police force, but in relation to such a person “contact” in paragraph (16) does not include contact that person has whilst acting in the execution of their duties as a member of such a force.

### **Complaints and conduct matters relating to the conduct of former members of a service police force**

**10.**—(1) Where a complaint or conduct matter relates to the conduct of a person who has ceased to be a member of a service police force since the time of the conduct, this Part applies subject to the modifications in paragraph (2)—

- (a) as if the person were still serving in the position in which the person last served; and
- (b) as if they did not include any requirement for the Commissioner or appropriate authority to determine whether administrative action procedures should be initiated against a person whose conduct is the subject-matter of a report.

(2) The modifications mentioned in paragraph (1) are—

- (a) in regulation 46(5) the reference to “regulations 47 to 52” is to be read as a reference to “regulations 47 to 51A”;
- (b) in regulation 48(1)(e) the reference to “regulation 50” is to be read as a reference to “regulation 50 or 51A”;
- (c) in regulation 51—
  - (i) paragraph (1) is to be read as if, at the beginning there were inserted “Subject to regulation 51A (special procedure: notice of enquiry)”;
  - (ii) paragraph (5) is to be read as if, for sub-paragraphs (a) and (b) there were substituted “be reasonable.”;
- (d) this Part is to be read as if, after regulation 51 there were inserted—

#### **“Special procedure: notice of enquiry**

**51A.**—(1) Where in the case of an investigation under—

- (a) regulation 34; or
- (b) regulation 36 other than by the Commissioner acting personally,

the Commissioner indicates that, having regard to the circumstances of the person concerned, it would be unreasonable to require the person to attend an interview and that the person should be given a written notice of enquiry, the person investigating must cause the person to be given a written notice of enquiry.

(2) Where in the case of an investigation under—

- (a) regulation 34; or
- (b) regulation 36 other than by the Commissioner acting personally,

the person investigating forms the opinion that, having regard to the circumstances of the person concerned, it would be unreasonable to require the person to attend an interview, the person investigating must notify the Commissioner of that opinion.

(3) Where in any other case the person investigating is satisfied that, having regard to the circumstances of the person concerned, it would be unreasonable to require the person to attend an interview, the person investigating may cause the person to be given a written notice of enquiry.

(4) A notice of enquiry given under this regulation must—

- (a) state any question the person investigating or, in the case of an investigation under regulation 34 or 36 other than by the Commissioner acting personally, the Commissioner, wishes to ask the person concerned; and
- (b) request a response to any such question from the person concerned within a specified period.

(5) The person investigating must make a written record of any notice of enquiry and response received under this regulation.”;

(e) this Part is to be read as if regulation 52 were omitted.

## CHAPTER 2

### Handling of complaints

#### **Duties to preserve evidence relating to complaints**

**11.**—(1) Where a complaint is made about the conduct of a Provost Marshal, the appropriate authority must secure that all such steps as are appropriate for the purposes of this Part are taken, both initially and from time to time after that, for obtaining and preserving evidence relating to the conduct complained of.

(2) Where—

- (a) a complaint is made to a Provost Marshal about the conduct of a member of a service police force under their direction; or
- (b) a Provost Marshal becomes aware that a complaint has been made to the Commissioner, the Defence Council or a Board about the conduct of a member of a service police force under that Provost Marshal’s direction,

that Provost Marshal must take all such steps as appear to be appropriate for the purposes of this Part for obtaining and preserving evidence relating to the conduct complained of.

(3) A Provost Marshal’s duty under paragraph (2) must be performed as soon as practicable after the complaint is made or, as the case may be, that Provost Marshal becomes aware of it.

(4) Where a Provost Marshal has a duty under paragraph (2) that Provost Marshal must continue to take steps from time to time that appear to be appropriate for the purposes of this Part, for obtaining and preserving evidence relating to the conduct complained of until that person is satisfied that it is no longer necessary to do so.

(5) The appropriate authority must comply with all such directions as may be given to it by the Commissioner in relation to the performance of the appropriate authority’s duty under paragraph (1).

(6) A Provost Marshal must take all such specific steps for obtaining or preserving evidence relating to the subject-matter of a complaint as directed to take, for the purposes of this regulation, by the appropriate authority for that Provost Marshal or by the Commissioner.

### **Initial handling and recording of complaints**

12.—(1) Where a complaint is made to the Commissioner, the Commissioner must give notification of the complaint to the appropriate authority.

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

(3) Where a complaint is made to the Defence Council or a Board, it must—

- (a) determine whether or not it is the appropriate authority; and
- (b) if it determines that it is not, give notification of the complaint to the appropriate authority.

(4) Where a complaint is made to a Provost Marshal, that Provost Marshal must—

- (a) determine whether or not that person is the appropriate authority; and
- (b) if that person determines that they are not the appropriate authority, give notification of the complaint to the appropriate authority.

(5) Where a notification is given under paragraph (1), (3) or (4), the person or body that gave the notification must notify the complainant that the notification has been given and of what it contained.

(6) Where—

- (a) the Defence Council or a Board determines under paragraph (3)(a) that it is the appropriate authority;
- (b) a Provost Marshal determines under paragraph (4)(a) that they are the appropriate authority; or
- (c) notification of the complaint has been given to the Defence Council, a Board or a Provost Marshal that it is or they are the appropriate authority under this regulation,

the appropriate authority must contact the complainant and seek the complainant's views on how the complaint should be handled.

(7) The appropriate authority must record the complaint if—

- (a) at any time the complainant indicates a wish for the complaint to be recorded; or
- (b) the appropriate authority determines that the complaint is to be handled in accordance with this Part.

(8) The appropriate authority must determine that a complaint is to be handled in accordance with this Part if—

- (a) the complaint is one alleging that the conduct or other matter complained of has resulted in death or serious injury;
- (b) the complaint is one alleging that there has been conduct by a member of a service police force which (if proved) might constitute the commission of a service offence or would justify the initiation of administrative action procedures;
- (c) the conduct or other matter complained of (if proved) might have involved the infringement of a person's rights under Article 2 or 3 of the Convention (within the meaning of the Human Rights Act 1998); or
- (d) the complaint falls within sub-paragraph (b), (c) or (d) of regulation 13(1).

(9) Where an appropriate authority determines (for the purposes of paragraph (7)) that a complaint is to be handled otherwise than in accordance with this Part, it must handle the complaint in such other manner as it considers appropriate with a view to resolving the complaint to the complainant's satisfaction.

(10) The duty in paragraph (9) ceases to apply if the complaint is recorded in accordance with paragraph (7).

(11) Where an appropriate authority records a complaint under paragraph (7), or determines that a complaint is to be handled otherwise than in accordance with this Part, it must notify the complainant of the recording of the complaint or (as the case may be) of the determination.

(12) Nothing in this regulation requires the taking of any action in relation to a complaint if the complaint has been withdrawn.

(13) Where the Defence Council, a Board or a Provost Marshal determines that what purports to be a complaint is not a complaint for the purposes of this Part, that body or person must notify the complainant of the determination and the grounds on which it was made.

(14) Where the Defence Council, a Board or a Provost Marshal determines that part of what has been received (whether directly or by virtue of a notification under this paragraph) is a complaint and part is not, that body or person must proceed under this paragraph as if those two parts had been separately received.

### **Reference of complaints to the Commissioner**

**13.—**(1) An appropriate authority must refer a complaint to the Commissioner if—

- (a) the complaint alleges that the conduct or other matter complained of has resulted in death or serious injury;
- (b) the complaint does not fall within sub-paragraph (a) but alleges conduct which constitutes—
  - (i) a serious assault, as determined in guidance issued by the Commissioner;
  - (ii) a serious sexual offence, as determined in guidance issued by the Commissioner;
  - (iii) serious corruption, including abuse of position for a sexual purpose or the purpose of pursuing an improper emotional relationship, as determined in guidance issued by the Commissioner;
  - (iv) a service offence or behaviour which is liable to lead to the initiation of administrative action procedures and which, in either case, was aggravated by discriminatory behaviour on the grounds of a person's race, sex, religion or other status as determined in guidance issued by the Commissioner;
  - (v) a relevant service offence;
- (c) the complaint arises from the same incident as one in which any conduct falling within sub-paragraph (a) or (b) is alleged;
- (d) the complaint does not fall within sub-paragraph (a), (b) or (c) but—
  - (i) relates to the conduct of a Provost Marshal; and
  - (ii) the appropriate authority is unable to satisfy itself, from the complaint alone, that the conduct complained of (if it were proved) would not justify the bringing of disciplinary proceedings or the initiation of administrative action procedures; or
- (e) the Commissioner notifies the appropriate authority that the complaint in question is to be referred to the Commissioner.

(2) In a case where there is no obligation under paragraph (1) to make a reference, an appropriate authority may refer a complaint to the Commissioner if that authority considers that it would be appropriate to do so by reason of—

- (a) the gravity of the subject-matter of the complaint; or
- (b) any exceptional circumstances.

(3) Where a Provost Marshal is the appropriate authority in relation to a complaint, and a reference under paragraph (1) or (2) is neither made nor required to be made, the appropriate authority for

that Provost Marshal may refer a complaint to the Commissioner if it considers that it would be appropriate to do so by reason of—

- (a) the gravity of the subject-matter of the complaint; or
- (b) any exceptional circumstances.

(4) Where there is an obligation under paragraph (1) to refer a complaint to the Commissioner, it must be so referred—

- (a) in relation to a complaint falling within any of sub-paragraphs (a) to (d) of that paragraph—
  - (i) without delay and in any event not later than the end of the day following the day on which it becomes clear to the appropriate authority that the complaint is one to which that sub-paragraph applies; and
  - (ii) in such manner as the Commissioner determines.
- (b) in relation to a complaint falling within sub-paragraph (e) of that paragraph—
  - (i) without delay and in any event not later than the end of the day following the day on which the Commissioner notifies the appropriate authority that the complaint is to be referred; and
  - (ii) in such manner as the Commissioner determines.

(5) Subject to paragraph (9)—

- (a) the power of the Commissioner by virtue of paragraph (1)(e) to require a complaint to be referred to the Commissioner;
- (b) the power of an appropriate authority to refer a complaint to the Commissioner under paragraph (2); or
- (c) the power of the Defence Council or Board to refer a complaint to the Commissioner under paragraph (3),

is exercisable at any time irrespective of whether the complaint is already being investigated by any person or has already been considered by the Commissioner.

(6) The power of an appropriate authority to refer a complaint to the Commissioner under paragraph (2) is also exercisable after a complaint has been handled in accordance with this Part if a recommendation is made under regulation 18(6)(a) or 64(12)(b).

(7) An appropriate authority which refers a complaint to the Commissioner under paragraph (1) or (2) must give a notification of the making of the reference to—

- (a) the complainant; and
- (b) except in a case where it appears to that body or person that to do so might prejudice an investigation of the complaint (whether an existing investigation or a possible future one), the person complained against (if any).

(8) The Defence Council or a Board which refers a complaint to the Commissioner under paragraph (3) must give a notification of the making of the reference to—

- (a) the complainant;
- (b) except in a case where it appears to that body that to do so might prejudice an investigation of the complaint (whether an existing investigation or a possible future one), the person complained against (if any); and
- (c) the appropriate authority.

(9) A complaint that has already been referred to the Commissioner under this regulation on a previous occasion, or that has been treated as having been so referred by virtue of regulation 14—

- (a) is not required to be referred again under this regulation unless the Commissioner so directs; and

(b) must not be referred in exercise of any power conferred by this regulation unless the Commissioner consents.

(10) The appropriate authority must record any complaint that is referred to the Commissioner under this regulation that has not already been recorded.

#### **Power of the Commissioner to treat complaint as having been referred**

**14.**—(1) The Commissioner may treat a complaint that comes to the Commissioner’s attention otherwise than by having been referred to the Commissioner under regulation 13 as having been so referred.

(2) Where the Commissioner treats a complaint as having been so referred under paragraph (1)—

- (a) regulations 12 and 13 do not apply, or cease to apply, in relation to the complaint except to the extent provided for by regulation 13(9); and
- (b) regulations 16, 17, 18, 32, and 64 apply in relation to the complaint as if it had been referred to the Commissioner by the appropriate authority under regulation 13.

(3) The Commissioner must notify the following that a complaint is being treated as having been referred under paragraph (1)—

- (a) the appropriate authority;
- (b) the complainant;
- (c) except in a case where it appears to the Commissioner that to do so might prejudice an investigation of the complaint (whether an existing investigation or a possible future one), the person complained against (if any).

(4) Where an appropriate authority receives a notification under paragraph (3) in respect of a complaint and the complaint has not yet been recorded, the authority must record the complaint.

#### **Recording of complaints: copies of complaints etc.**

**15.**—(1) Where the appropriate authority records a complaint under regulation 12(7) or 14(4), the authority must provide—

- (a) a copy of the record made of the complaint to the complainant; and
- (b) subject to the following provisions of this regulation, a copy of the complaint to the person complained against (if any).

(2) A copy of a complaint provided under paragraph (1) may be in a form which keeps anonymous the identity of the complainant or any other person.

(3) The appropriate authority may decide not to provide a copy of a complaint under paragraph (1) if it believes that to do so—

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

(4) Where the appropriate authority decides not to provide a copy of a complaint under paragraph (1), the authority must keep that decision under regular review.

#### **Duties of the Commissioner on references under regulation 13**

**16.**—(1) The Commissioner must determine, in the case of every complaint referred to the Commissioner by the appropriate authority, whether or not it is necessary for the complaint to be investigated.

(2) The Commissioner must determine that it is necessary for complaints referred to the Commissioner to be investigated—

- (a) that relate to the conduct of a Provost Marshal; and
  - (b) in respect of which there is an indication that the Provost Marshal may have committed a service offence or behaved in a way which would justify the initiation of administrative action procedures.
- (3) Where the Commissioner is required by paragraph (2) to determine that it is necessary for a complaint to be investigated, regulation 32 applies in relation to the complaint as if paragraphs (4) (a), (5) and (9)(b) were omitted.
- (4) Where the Commissioner determines under this regulation that it is not necessary for a complaint to be investigated —
- (a) in a case where the complaint is already being investigated by the appropriate authority on its own behalf (and notwithstanding the Commissioner’s determination), the Commissioner must refer the complaint back to the appropriate authority for the investigation to be completed; and
  - (b) in any other case, the Commissioner may, if the Commissioner thinks fit, refer the complaint back to the appropriate authority to be dealt with by that authority in accordance with regulation 17.
- (5) Where the Commissioner refers a complaint back under paragraph (4), the Commissioner must give a notification of the making of the reference back—
- (a) to the complainant; and
  - (b) except in a case where it appears to the Commissioner that to do so might prejudice an investigation of the complaint (whether an existing investigation or a possible future one), to the person complained against (if any).

### **Handling of complaints by the appropriate authority**

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

(2) But this regulation does not apply to a complaint if it is one that has been, or must be, referred to the Commissioner under regulation 13, unless the complaint is for the time being referred back to the appropriate authority under regulation 16(4)(b).

(3) The appropriate authority must handle the complaint in such reasonable and proportionate manner as it determines.

(4) An appropriate authority may handle a complaint in accordance with paragraph (3) by (amongst other things)—

- (a) making arrangements for the complaint to be investigated by the authority on its own behalf;
- (b) notifying the complainant that no further action is to be taken in relation to the complaint.

(5) The appropriate authority must comply with its duty under paragraph (3) by making arrangements for the complaint to be investigated by the authority on its own behalf if at any time it appears to the authority from the complaint, or from the authority’s handling of the complaint to that point, that there is an indication that—

- (a) a member of a service police force may have committed a service offence or behaved in a manner that would justify the initiation of administrative action procedures; or
- (b) there may have been the infringement of a person’s rights under Article 2 or 3 of the Convention (within the meaning of the Human Rights Act 1998).

(6) The duty imposed by paragraph (5) does not apply where the appropriate authority determines that—



- (a) the complaint concerns substantially the same—
  - (i) conduct or other matter as a complaint made previously (“the previous complaint”); or
  - (ii) conduct as a conduct matter recorded previously (“the previous conduct matter”);
- (b) there is no fresh indication in respect of that conduct or other matter that—
  - (i) a member of a service police force may have committed a service offence or behaved in a manner that would justify the initiation of administrative action procedures; or
  - (ii) there may have been an infringement of a person’s rights under Article 2 or 3 of the Convention (within the meaning of the Human Rights Act 1998);
- (c) there is no fresh substantive evidence in respect of that conduct or other matter which was not reasonably available at the time the previous complaint was made or the previous conduct matter was recorded; and
- (d) as respects the previous complaint or previous conduct matter—
  - (i) it has been or is being investigated; or
  - (ii) in the case of a complaint, it has been or is being otherwise handled in accordance with this Part or this Part ceased to apply to it in accordance with regulation 19 (withdrawn complaints) or regulations 19 and 20 (withdrawn complaints: no written signed notification).

(7) A statement made by any person for the purposes of the handling of any complaint in accordance with paragraph (3) otherwise than by the appropriate authority making arrangements for the complaint to be investigated by the authority on its own behalf, is not admissible in any subsequent disciplinary, criminal or civil proceedings or administrative action procedures except to the extent that it consists of an admission relating to a matter that has not been subjected to such handling.

### **Reviews relating to complaints dealt with other than by investigation**

**18.**—(1) This regulation applies where a complaint is handled by the appropriate authority in accordance with regulation 17(3) otherwise than by the authority making arrangements for the complaint to be investigated by the authority on its own behalf.

(2) The complainant has the right to apply to the relevant review body for a review of the outcome of the complaint.

(3) The relevant review body must notify the following of an application for a review under paragraph (2)—

- (a) the appropriate authority;
- (b) every person entitled to be kept properly informed in relation to the complaint under regulation 78; and
- (c) the person complained against (if any).

(4) On a review applied for under paragraph (2), the relevant review body must determine whether the outcome is a reasonable and proportionate outcome.

(5) Where the Commissioner is the relevant review body and the Commissioner finds that the outcome is not a reasonable and proportionate outcome, the Commissioner may—

- (a) determine that it is necessary for the complaint to be investigated;
- (b) make a recommendation under regulation 68.

(6) Where the Defence Council or a Board is the relevant review body and it finds that the outcome is not a reasonable and proportionate outcome, it may—

- (a) where the complaint has not previously been referred to the Commissioner under regulation 13, make a recommendation to the appropriate authority that it refer the complaint to the Commissioner under paragraph (2) of that regulation;
  - (b) make a recommendation to the appropriate authority that it make arrangements for the complaint to be investigated by the authority on its own behalf;
  - (c) make a recommendation under regulation 68.
- (7) Where the Defence Council or a Board makes a recommendation under paragraph (6)(a) or (b)—
- (a) the Provost Marshal to whom the recommendation is made must—
    - (i) provide a written response to the body making the recommendation stating—
      - (aa) whether the Provost Marshal accepts the recommendation;
      - (bb) if the recommendation is accepted, the steps the Provost Marshal is proposing to take to give effect to the recommendation;
      - (cc) if the recommendation is not accepted, the reasons why the Provost Marshal does not accept it;
    - (ii) subject to sub-paragraph (b)(i), provide the response before the end of the period of 28 days starting with the day after the day on which the recommendation was made;
  - (b) the body making the recommendation—
    - (i) may extend the period mentioned in sub-paragraph (a)(ii) and if the body does so, the Provost Marshal to whom the recommendation is made must provide the response before the end of the extended period;
    - (ii) must send a copy of the recommendation and the response to it to—
      - (aa) the complainant concerned;
      - (bb) any interested person; and
      - (cc) except in a case where it appears to the body making the recommendation that to do so might prejudice any investigation, the person complained against (if any).
- (8) The relevant review body must give notification of the outcome of a review under this regulation and of its reasons for the determination made under paragraph (4) to—
- (a) the appropriate authority;
  - (b) the complainant concerned;
  - (c) every person entitled to be kept properly informed in relation to the complaint under regulation 78; and
  - (d) except in a case where it appears to the relevant review body that to do so might prejudice any investigation of the complaint, the person complained against (if any).
- (9) In this regulation, references to the outcome of a complaint do not include the outcome of any disciplinary or criminal proceedings or administrative action procedures brought in relation to any matter which was the subject of the complaint.
- (10) In this regulation, “complainant concerned” means the complainant who applied for review under paragraph (2).

### **Withdrawn complaints**

**19.—**(1) This regulation applies where an appropriate authority receives a notification signed by the complainant or the complainant’s solicitor or other authorised agent on the complainant’s behalf that the complainant—

- (a) withdraws the complaint; or
- (b) does not wish any further steps to be taken.

(2) The appropriate authority must record the withdrawal or the fact that the complainant does not wish any further steps to be taken and, subject to the following provisions of this regulation, this Part ceases to apply to the complaint.

- (3) Where the notification mentioned in paragraph (1) relates to a complaint which—
- (a) was referred to the Commissioner under regulation 13(1) or is being treated by the Commissioner as having been so referred under regulation 14(1); and
  - (b) has not been referred back to the appropriate authority under regulation 16(4),

the appropriate authority must notify the Commissioner that it has recorded the withdrawal or the fact that the complainant does not wish any further steps to be taken.

(4) Where the notification mentioned in paragraph (1) relates to a complaint which the appropriate authority knows is subject to a review under regulation 18 or 64 the appropriate authority must notify the relevant review body that it has recorded the withdrawal or the fact that the complainant does not wish any further steps to be taken.

- (5) In a case falling within paragraph (3) or paragraphs (3) and (4), the Commissioner must—
- (a) determine whether it is in the public interest for the complaint to be treated as a recordable conduct matter; and
  - (b) notify the appropriate authority and, in a case falling within paragraphs (3) and (4) in which the relevant review body is the Defence Council or a Board, the relevant review body of the Commissioner's determination.

(6) In a case falling within paragraph (4) (but not also paragraph (3)), the appropriate authority must—

- (a) determine whether it is in the public interest for the complaint to be treated as a recordable conduct matter; and
- (b) notify the relevant review body of its determination and the reasons for it.

(7) Where the notification mentioned in paragraph (1) relates to a complaint which does not fall within paragraph (3) or (4), the appropriate authority must determine whether it is in the public interest for the complaint to be treated as a recordable conduct matter.

(8) Where a determination is made under paragraph (5), (6) or (7) that it is in the public interest for the complaint to be treated as a recordable conduct matter, Chapter 3 of this Part (handling of conduct matters) applies to that matter.

- (9) Where—
- (a) a complaint is subject to a review by the Commissioner under regulation 64; and
  - (b) the appropriate authority notifies the Commissioner (as the relevant review body) under paragraph (6)(b) that it has determined that the complaint is not to be treated as a recordable conduct matter,

the Commissioner must consider whether it is in the public interest for that determination to be reversed and, if so, the Commissioner must instruct the appropriate authority to reverse the determination.

(10) Subject to paragraph (11), the appropriate authority must notify the person complained against if—

- (a) it records the withdrawal of the complaint or the fact that the complainant does not wish any further steps to be taken;

- (b) a determination is made under paragraph (5), (6) or (7) that it is in the public interest for the complaint to be treated as a recordable conduct matter;
  - (c) the Commissioner instructs the appropriate authority to reverse a determination not to treat the complaint as a recordable conduct matter; or
  - (d) this Part ceases to apply to the complaint.
- (11) Nothing in paragraph (10) requires the appropriate authority to make a notification if it believes that to do so—
- (a) might prejudice any investigations relating to a service offence or pending proceedings; or
  - (b) would otherwise be contrary to the public interest.

#### **Withdrawn complaints: no written signed notification**

**20.**—(1) This regulation applies where the complainant indicates a wish—

- (a) to withdraw the complaint; or
- (b) that no further steps be taken,

but does not provide a notification to that effect signed by the complainant or the complainant's solicitor or other authorised agent on the complainant's behalf.

(2) The appropriate authority must write to the complainant to determine how the complainant wishes to proceed.

(3) A letter under paragraph (2) must, unless otherwise determined in guidance issued by the Commissioner, be sent by recorded delivery.

(4) Where the complainant—

- (a) replies confirming the complainant's wish to withdraw the complaint or that no further steps be taken; or
- (b) does not reply within a period of 28 days starting with the day after the day the letter was sent by the appropriate authority in accordance with paragraph (2),

the appropriate authority must proceed as if it had received a notification signed by the complainant that the complainant withdraws the complaint.

## CHAPTER 3

### Handling of conduct matters

#### **Conduct matters arising in civil proceedings**

**21.**—(1) This regulation applies where—

- (a) the Defence Council, a Board or a Provost Marshal has received notification (whether or not under this paragraph) that civil proceedings relating to any matter have been brought by any person, or it otherwise appears that such proceedings are likely to be so brought; and
- (b) it appears to that body or that Provost Marshal (whether at the time of the notification or at any time subsequently) that those proceedings involve or would involve a conduct matter.

(2) The Defence Council, Board or Provost Marshal, as the case may be—

- (a) must consider whether it is or they are the appropriate authority in relation to the conduct matter in question; and
- (b) if the body or the Provost Marshal is not, must notify the body or person that is the appropriate authority about the proceedings, or the proposal to bring them, and about the circumstances that make it appear as mentioned in paragraph (1)(b).

(3) Where the Defence Council, a Board or a Provost Marshal determines for the purposes of this regulation that it or, as the case may be, they are the appropriate authority in relation to any conduct matter, that body or Provost Marshal must determine whether the matter is one which is required to be referred to the Commissioner under regulation 24 or is one which it would be appropriate to so refer.

(4) In a case where the appropriate authority determines that the matter is one which is required to be referred to the Commissioner under regulation 24, or is one which it would be appropriate to so refer, the appropriate authority must record the matter.

(5) In any other case, the appropriate authority must record the matter, unless paragraph (6) applies.

(6) This paragraph applies where the matter concerns substantially the same conduct as a complaint made previously (“the previous complaint”) or a conduct matter recorded (“the previous conduct matter”), and the appropriate authority determines that—

- (a) there is no fresh indication that a member of a service police force may have committed a service offence or behaved in a way which would justify the initiation of administrative action procedures;
- (b) there is no fresh substantive evidence which was not reasonably available at the time the previous complaint was made or the previous conduct matter was recorded; and
- (c) the previous complaint or previous conduct matter has been or is being investigated or (in the case of a complaint) otherwise handled in accordance with this Part.

(7) Where the appropriate authority is not required to record a matter under this regulation, the authority may in its discretion record the matter.

(8) In a case where the appropriate authority—

- (a) records a matter under this regulation; and
- (b) is not required to refer the matter to the Commissioner under regulation 24 and does not do so,

the appropriate authority may deal with the matter in such other manner (if any) as it may determine.

(9) Nothing in paragraph (4) or (5) requires the 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 disciplinary or criminal proceedings against the person to whose conduct the matter relates or that administrative action procedures have been or are being initiated against that person.

(10) 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.

(11) Where there is an obligation under this regulation to refer any matter to the Commissioner, it must be so referred in such manner as the Commissioner determines.

### **Recording etc. of conduct matters in other cases**

**22.**—(1) This regulation applies where—

- (a) a conduct matter comes (otherwise than as mentioned in regulation 21) to the attention of the appropriate authority in relation to that matter, and
- (b) it appears to the appropriate authority that the conduct involved in that matter falls within paragraph (2).

(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;
- (b) any person has been adversely affected by it; or
- (c) it is—
  - (i) a serious assault, as determined in guidance issued by the Commissioner;
  - (ii) a serious sexual offence, as determined in guidance issued by the Commissioner;
  - (iii) serious corruption, including abuse of position for a sexual purpose or the purpose of pursuing an improper emotional relationship, as determined in guidance issued by the Commissioner;
  - (iv) a service offence or behaviour which is liable to lead to the initiation of administrative action procedures and which, in either case, was aggravated by discriminatory behaviour on the grounds of a person's race, sex, religion or other status as determined in guidance issued by the Commissioner;
  - (v) a relevant service offence;
  - (vi) conduct whose gravity or other exceptional circumstances make it appropriate to record the matter;
  - (vii) conduct of a Provost Marshal;
  - (viii) conduct which is alleged to have taken place in the same incident as one in which conduct within paragraphs (i) to (v) is alleged.

(3) The appropriate authority must determine whether the matter is one which it is required to refer to the Commissioner under regulation 24, or is one which it would be appropriate to so refer.

(4) In a case where the appropriate authority determines that the matter is one which it is required to refer to the Commissioner under regulation 24, or is one which it would be appropriate to so refer, it must record the matter.

(5) In any other case, the appropriate authority must determine whether the matter falls within regulation 21(6).

(6) In a case where the appropriate authority determines that the matter does not fall within regulation 21(6), it must record the matter.

(7) In any other case, the appropriate authority may (but need not) record the matter.

(8) In a case where the appropriate authority—

- (a) records a matter under this paragraph, and
- (b) is not required to refer the matter to the Commissioner under regulation 24 and does not do so,

the appropriate authority may deal with the matter in such other manner (if any) as it may determine.

(9) Nothing in paragraph (4) or (6) requires the 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 disciplinary or criminal proceedings against the person to whose conduct the matter relates or that administrative action procedures have been or are being initiated against that person.

### **Duties to preserve evidence relating to conduct matters**

**23.—**(1) Where a recordable conduct matter that relates to the conduct of a Provost Marshal comes to the attention of the appropriate authority, that authority must secure that all such steps as are appropriate for the purposes of this Part are taken, both initially and from time to time after that, for obtaining and preserving evidence relating to that matter.

(2) Where a Provost Marshal who is the appropriate authority becomes aware of any recordable conduct matter relating to the conduct of a member of a service police force, that person must take

all such steps as appear to be appropriate for the purposes of this Part for obtaining and preserving evidence relating to that matter.

(3) A Provost Marshal's duty under paragraph (2) must be performed as soon as practicable after that person becomes aware of the matter in question.

(4) After that, the Provost Marshal must, until satisfied that it is no longer necessary to do so, continue to take steps from time to time that are considered to be appropriate for the purposes of this Part for obtaining and preserving evidence relating to the matter.

(5) The Defence Council or the Board must comply with all such directions as may be given to it by the Commissioner in relation to the performance of any duty imposed on it by virtue of paragraph (1).

(6) A Provost Marshal must take all such specific steps for obtaining or preserving evidence relating to any recordable conduct matter as that person may be directed to take for the purposes of this regulation by the appropriate authority or the Commissioner.

### **Reference of conduct matters to the Commissioner**

**24.—**(1) An appropriate authority must refer a recordable conduct matter to the Commissioner if—

- (a) that matter relates to any incident or circumstances in or in consequence of which any person has died or suffered serious injury or to conduct falling within regulation 22(2)(c) (i) to (v), (vii) or (viii); or
- (b) the Commissioner notifies the appropriate authority that the matter must be referred to the Commissioner.

(2) In any case where there is no duty under paragraph (1) to make a reference, the appropriate authority may refer a recordable conduct matter to the Commissioner if that authority considers that it would be appropriate to do so by reason of—

- (a) the gravity of the matter; or
- (b) any exceptional circumstances.

(3) Where a Provost Marshal is the appropriate authority and a reference under paragraph (1) or (2) is neither made nor required to be made, the appropriate authority for that Provost Marshal may refer any recordable conduct matter to the Commissioner if it considers that it would be appropriate to do so by reason of—

- (a) the gravity of the matter; or
- (b) any exceptional circumstances.

(4) Any conduct matter which is required to be referred to the Commissioner must be referred in such manner as the Commissioner determines and—

- (a) if the matter falls within paragraph (1)(a), without delay and in any event not later than the end of the day following the day on which it becomes clear to the appropriate authority that the conduct matter is one to which that paragraph applies;
- (b) if the matter falls within paragraph (1)(b), without delay and in any event not later than the end of the day following the day on which the Commissioner notifies the appropriate authority that the conduct matter is to be referred.

(5) Subject to paragraph (7), the power of—

- (a) the Commissioner by virtue of paragraph (1)(b) to require a matter to be referred to the Commissioner;
- (b) the appropriate authority to refer any matter to the Commissioner under paragraph (2); and

- (c) the Defence Council or a Board to refer any matter to the Commissioner under paragraph (3),

are each exercisable at any time irrespective of whether the matter is already being investigated by any person or has already been considered by the Commissioner.

- (6) Where—

- (a) an appropriate authority refers a matter to the Commissioner under this regulation; and
- (b) that authority does not consider that to do so might prejudice an investigation of that matter (whether an existing investigation or a possible future one),

the authority must give a notification of the making of the reference to the person to whose conduct that matter relates.

- (7) A matter that has already been referred to the Commissioner under this regulation on a previous occasion, or that has been treated as having been so referred by virtue of regulation 25—

- (a) is not required to be referred again under this paragraph unless the Commissioner so directs; and
- (b) must not be referred in exercise of any power conferred by this regulation unless the Commissioner consents.

#### **Power of the Commissioner to treat conduct matter as having been referred**

**25.—**(1) The Commissioner may treat a conduct matter that comes to the Commissioner's attention otherwise than by having been referred to the Commissioner under regulation 24 as having been so referred.

- (2) Where the Commissioner treats a conduct matter as having been so referred—

- (a) regulations 21, 22 and 24 do not apply, or cease to apply, in relation to the matter except to the extent provided for by regulation 24(7); and
- (b) regulations 26 and 32 apply in relation to the matter as if it had been referred to the Commissioner by the appropriate authority under regulation 24.

(3) The Commissioner must notify the following that a conduct matter is being treated as having been so referred—

- (a) the appropriate authority;
- (b) except in a case where it appears to the Commissioner that to do so might prejudice an investigation of the matter (whether an existing investigation or a possible future one), the person to whose conduct the matter relates.

(4) Where an appropriate authority receives a notification under paragraph (3) in respect of a conduct matter and the matter has not yet been recorded, the authority must record the matter.

#### **Duties of the Commissioner on references under regulation 24**

**26.—**(1) In the case of every recordable conduct matter referred to the Commissioner by an appropriate authority under regulation 24, the Commissioner must determine whether or not it is necessary for the matter to be investigated.

(2) The Commissioner must determine that it is necessary for recordable conduct matters referred to the Commissioner that relate to the conduct of a Provost Marshal to be investigated.

(3) Where the Commissioner is required by paragraph (2) to determine that it is necessary for a recordable conduct matter to be investigated, regulation 32 applies in relation to the matter as if paragraphs (4)(a), (5) and (9)(b) were omitted.



(4) Where the Commissioner determines under this regulation that it is not necessary for a recordable conduct matter to be investigated—

- (a) in a case where the recordable conduct matter is already being investigated by the appropriate authority on its own behalf (and notwithstanding the Commissioner's determination), the Commissioner must refer the matter back to the appropriate authority for the investigation to be completed; and
- (b) in any other case, the Commissioner may, if the Commissioner thinks fit, refer the matter back to the appropriate authority to be dealt with by that authority in such manner (if any) as that authority may determine.

(5) Where—

- (a) the Commissioner refers a matter back to the appropriate authority under this regulation; and
- (b) the Commissioner does not consider that to do so might prejudice an investigation of that matter (whether an existing investigation or a possible future one),

the Commissioner must give a notification of the making of the reference to the person to whose conduct that matter relates.

## CHAPTER 4

### Handling of Death and Serious Injury Matters

#### **Duty to record DSI matters**

27. Where a DSI matter comes to the attention of the appropriate authority in relation to that matter, the authority must record that matter.

#### **Duty to preserve evidence relating to DSI matters**

28.—(1) Where—

- (a) the relevant officer in relation to a DSI matter is a Provost Marshal; and
- (b) the DSI matter comes to the attention of the appropriate authority for that Provost Marshal,

that authority must secure that all such steps as are appropriate for the purposes of this Part are taken, both initially and from time to time after that, for obtaining and preserving evidence relating to that matter.

(2) Where—

- (a) a Provost Marshal becomes aware of a DSI matter; and
- (b) the relevant officer was under the direction of that Provost Marshal at the time the DSI matter occurred,

the Provost Marshal must take all such steps as appear to be appropriate for the purposes of this Part for obtaining and preserving evidence relating to that matter.

(3) A Provost Marshal's duty under paragraph (2) must be performed as soon as practicable after that person becomes aware of the matter in question.

(4) After that, the Provost Marshal must, until satisfied that it is no longer necessary to do so, continue to take steps from time to time that are considered to be appropriate for the purposes of this Part for obtaining and preserving evidence relating to the matter.

(5) The Defence Council or a Board must comply with all such directions as may be given to it by the Commissioner in relation to the performance of any duty imposed on it by virtue of paragraph (1).

(6) A Provost Marshal must take all such specific steps for obtaining or preserving evidence relating to any DSI matter for the purposes of this regulation as directed by the appropriate authority or the Commissioner.

#### **Reference of DSI matters to the Commissioner**

**29.**—(1) The appropriate authority must refer a DSI matter to the Commissioner.

(2) Any DSI matter which is required to be referred to the Commissioner must be referred in such manner as the Commissioner determines and—

- (a) in a case where the Commissioner directs that the matter be referred to the Commissioner, without delay and in any event not later than the end of the day following the day on which the Commissioner so directs; and
- (b) in any other case, without delay and in any event not later than the end of the day following the day on which the matter first comes to the attention of the appropriate authority.

(3) A matter that has already been referred to the Commissioner under this regulation on a previous occasion, or that has been treated as having been so referred by virtue of regulation 30 is not required to be referred again under this regulation unless the Commissioner so directs.

#### **Power of the Commissioner to treat DSI matter as having been referred**

**30.**—(1) The Commissioner may treat a DSI matter that comes to the Commissioner's attention otherwise than by having been referred to the Commissioner under regulation 29 as having been so referred.

(2) Where the Commissioner treats a DSI matter as having been so referred—

- (a) regulations 27 and 29 do not apply, or cease to apply, in relation to the matter except to the extent provided for by regulation 29(3); and
- (b) regulations 31 and 32 apply in relation to the matter as if it had been referred to the Commissioner by the appropriate authority under regulation 29.

(3) The Commissioner must notify the appropriate authority that the Commissioner is treating a DSI matter as having been so referred.

(4) Where an appropriate authority receives a notification under paragraph (3) in respect of a DSI matter and the matter has not yet been recorded, the appropriate authority must record the matter.

#### **Duties of the Commissioner on references under regulation 29**

**31.**—(1) The Commissioner must, in the case of every DSI matter referred to the Commissioner by an appropriate authority, determine whether or not it is necessary for the matter to be investigated.

(2) The Commissioner must determine that it is necessary for DSI matters referred to the Commissioner in relation to which the relevant officer is a Provost Marshal to be investigated.

(3) Where the Commissioner is required by paragraph (2) to determine that it is necessary for a DSI matter to be investigated, regulation 32 applies in relation to the matter as if paragraphs (4)(a), (5) and (9)(b) of that regulation were omitted.

(4) Where the Commissioner determines under this regulation that it is not necessary for a DSI matter to be investigated—

- (a) in a case where the DSI matter is already being investigated by the appropriate authority on its own behalf (and notwithstanding the Commissioner's determination) the Commissioner must refer the matter back to the appropriate authority for the investigation to be completed; and

- (b) in any other case, the Commissioner may, if the Commissioner thinks fit, refer the matter back to the appropriate authority to be dealt with by that authority in such manner (if any) as that authority may determine.

## CHAPTER 5

### Investigations and Subsequent Proceedings etc.

#### **Power of the Commissioner to determine the form of an investigation**

**32.**—(1) This regulation applies where—

- (a) a complaint, recordable conduct matter or DSI matter is referred to the Commissioner; and
- (b) the Commissioner determines under regulation 16(1), 26(1) or 31(1) that it is necessary for the complaint or matter to be investigated.

(2) This regulation also applies where the Commissioner determines under regulation 18(5)(a) that it is necessary for a complaint to be investigated.

(3) The Commissioner must determine the form which the investigation should take.

(4) The only forms which the investigation may take in accordance with a determination made under this regulation are—

- (a) an investigation by the appropriate authority on its own behalf;
- (b) an investigation by that authority under the direction of the Commissioner;
- (c) an investigation by the Commissioner.

(5) In making a determination under paragraph (3) the Commissioner must first determine whether, having regard to the seriousness of the case and the public interest, it is appropriate for the investigation to take the form of an investigation by the appropriate authority on its own behalf, and if it is, the Commissioner must determine that the investigation is to take that form.

(6) Where, in accordance with paragraph (5), the Commissioner determines that it is not appropriate for the investigation to take the form of an investigation by the appropriate authority on its own behalf, the Commissioner must determine that the investigation is to take the form of an investigation by the Commissioner unless paragraph (7) applies.

(7) This paragraph applies where the Commissioner determines that it would be more appropriate for the investigation to take the form of an investigation by the appropriate authority under the direction of the Commissioner, in which case the Commissioner must determine that the investigation is to take that form.

(8) Where the Commissioner determines under paragraph (7) or (10) that an investigation is to take the form of an investigation by the appropriate authority under the direction of the Commissioner, the Commissioner must keep under review whether that form of investigation continues to be the most appropriate form of investigation.

(9) If, on such a review, the Commissioner determines that—

- (a) it would be more appropriate for the investigation to take the form of an investigation by the Commissioner, the Commissioner must make a further determination under this regulation (to replace the earlier one) that the investigation is instead to take that form;
- (b) having regard to the seriousness of the case and the public interest, it would be more appropriate for the investigation to take the form of an investigation by the appropriate authority on its own behalf, the Commissioner may make a further determination under this regulation (to replace the earlier one) that the investigation is instead to take that form.

(10) Subject to paragraph (9), if at any time the Commissioner determines that, were the Commissioner to apply paragraphs (5) to (7) again, the form of the investigation would be different,

the Commissioner may make a further determination under this paragraph (to replace the earlier one) such that the investigation takes that different form.

(11) 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 Commissioner may give—

- (a) the appropriate authority; and
- (b) any person previously appointed to carry out the investigation,

such directions as the Commissioner considers appropriate for the purpose of giving effect to the new determination.

(12) The person to whom a direction is given under paragraph (11) must comply with it.

(13) The Commissioner must notify the appropriate authority of any determination that the Commissioner makes under this regulation in relation to a particular complaint, recordable conduct matter or DSI matter and of the Commissioner's reasons for making the determination.

(14) The Commissioner must also notify the following, of any determination that the Commissioner makes under this paragraph in relation to a particular complaint, recordable conduct matter or DSI matter and of the Commissioner's reasons for making the determination—

- (a) every person entitled to be kept properly informed in relation to the complaint or matter under regulation 78;
- (b) where the determination is made in relation to a complaint, the complainant;
- (c) the person to whose conduct the investigation will relate.

(15) The duty imposed by paragraph (14) on the Commissioner in relation to a complaint, recordable conduct matter or DSI matter is subject to regulation 67.

### **Investigations by the appropriate authority on its own behalf**

**33.**—(1) This regulation applies if the appropriate authority, acting in accordance with regulation 17(3) or in response to a recommendation under regulation 18(6)(b), is to make arrangements for a complaint to be investigated by the appropriate authority on its own behalf.

(2) This regulation also applies if the appropriate authority is required by virtue of any determination made by the Commissioner under regulation 32, to make arrangements for a complaint, recordable conduct matter or DSI matter to be investigated by the appropriate authority on its own behalf.

(3) This regulation also applies if—

- (a) a determination falls to be made by that authority under regulation 21(8), 22(8) or 26(4) in relation to any recordable conduct matter or under regulation 31(5) 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.

(4) Subject to paragraph (5) or (6), the appropriate authority must appoint a member of a service police force to investigate the complaint or matter.

(5) The person appointed under this regulation to investigate any complaint or conduct matter in the case of an investigation relating to any conduct of a Provost Marshal must not be a person under that Provost Marshal's direction.

(6) The person appointed under this regulation to investigate any DSI matter in relation to which the relevant officer is a Provost Marshal must not be a person under that Provost Marshal's direction.

### **Investigations directed by the Commissioner**

**34.**—(1) This regulation applies where the Commissioner has determined that the Commissioner should direct the investigation by the appropriate authority of any complaint, recordable conduct matter or DSI matter.

(2) On being given notice of that determination, the appropriate authority must, if it has not already done so, appoint a member of a service police force to investigate the complaint or matter.

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

(4) Where at any time the Commissioner is not satisfied with the person investigating, the Commissioner 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 Commissioner of the person selected.

(5) Paragraph (4) applies whether or not the person investigating was appointed—

- (a) before the appropriate authority was given notice of the Commissioner’s determination that it should direct the investigation by the appropriate authority;
- (b) under paragraph (2) (including where the appointment was approved by the Commissioner in accordance with paragraph (3)); or
- (c) under paragraph (6)(a).

(6) Where a selection made in pursuance of a requirement under paragraph (4) has been notified to the Commissioner—

- (a) the appropriate authority must appoint that person to investigate the complaint or matter if, but only if, the Commissioner notifies the authority that the appointment of that person is approved;
- (b) if the Commissioner notifies the authority that the appointment of that person is not approved, the appropriate authority must make another selection in accordance with paragraph (4).

(7) A person appointed under this regulation to investigate any complaint or conduct matter in the case of an investigation relating to any conduct of a Provost Marshal, must not be a member of the service police force that the Provost Marshal heads or a person under the Provost Marshal’s direction.

(8) A person appointed under this regulation to investigate any DSI matter in relation to which the relevant officer is a Provost Marshal, must not be a member of the service police force that the Provost Marshal heads or a person under that Provost Marshal’s direction.

(9) The person appointed to investigate the complaint or matter is, in relation to that investigation, under the direction of the Commissioner.

(10) The person appointed to investigate the complaint or matter must keep the Commissioner informed of the progress of the investigation.

### **Appointment of persons to carry out investigations**

**35.** A person may not be appointed to carry out an investigation under regulation 33 or 34—

- (a) unless the person has an appropriate level of knowledge, skills and experience to plan and manage the investigation;

- (b) if the person works, directly or indirectly, under the management of a person whose conduct is being investigated;
- (c) in a case where the conduct of a senior officer serving in the tri-service serious crime unit is being investigated, if the person is—
  - (i) the Provost Marshal for serious crime or the Provost Marshal of the service police force of which that person is a member; or
  - (ii) serving with the tri-service serious crime unit or is a member of the service police force that the senior officer is a member of;
- (d) in any other case where the conduct of a senior officer is being investigated, if the person is—
  - (i) the Provost Marshal of the service police force concerned; or
  - (ii) another member of that force;
- (e) if the person's involvement could reasonably give rise to a concern as to whether the person could act impartially.

### **Investigations by the Commissioner**

**36.**—(1) This regulation applies where the Commissioner has determined that the Commissioner should carry out the investigation of a complaint, recordable conduct matter or DSI matter.

- (2) The Commissioner must designate both—
  - (a) a person to take charge of the investigation; and
  - (b) such members of the Commissioner's staff as are required by the Commissioner to assist the person designated to take charge of the investigation.
- (3) The person designated under paragraph (2) to take charge of an investigation must be—
  - (a) the Commissioner acting personally; or
  - (b) an investigating officer appointed under section 365BB of the 2006 Act.
- (4) A person who—
  - (a) is designated under paragraph (2) in relation to any investigation; but
  - (b) does not already have all the powers of a service policeman,

has the same powers as a service policeman for the purposes of the carrying out of the investigation and all purposes connected with it.

(5) Schedule 1 (which makes further provision in relation to investigations under this regulation) has effect.

### **Timeliness of investigations**

**37.**—(1) Where an investigation under regulation 33 is not completed within a relevant period, the appropriate authority must, as soon as practicable after the end of that period, provide in writing the information mentioned in paragraph (4)—

- (a) where the appropriate authority is a Provost Marshal, to the appropriate authority for that Provost Marshal, except where it appears to that Provost Marshal that to do so might prejudice the investigation or any other investigation; and
- (b) to the Commissioner.

(2) Where an investigation under regulation 34 or 36 is not completed within a relevant period, the Commissioner must, as soon as practicable after the end of that period, provide in writing the information mentioned in paragraph (4)—

(a) where the appropriate authority is a Provost Marshal, to that Provost Marshal and the appropriate authority for that Provost Marshal; and

(b) in any other case, to the appropriate authority,

except in a case where it appears to the Commissioner that to do so might prejudice the investigation or any other investigation.

(3) For the purposes of this regulation, each of the following is a “relevant period”—

- (a) the period of 12 months starting with the date on which—
- (i) the complaint to which the investigation relates was made; or
  - (ii) the conduct matter or DSI matter to which the investigation relates came to the attention of the appropriate authority;
- (b) each subsequent period of six months starting with the day after the end of the previous relevant period.

(4) The information is —

- (a) the date on which—
- (i) the complaint to which the investigation relates was made; or
  - (ii) the conduct matter or DSI matter to which the investigation relates came to the attention of the appropriate authority;
- (b) the date on which any notice was given under regulation 48(1);
- (c) the progress of the investigation;
- (d) an estimate of when the report on the investigation will be submitted or completed under regulation 56 or 60;
- (e) the reason for the length of time being taken to complete the investigation; and
- (f) a summary of planned steps to progress the investigation and bring it to a conclusion.

(5) The appropriate authority or the Commissioner (as the case may be) must send a copy of the information provided in writing under paragraph (1) or (2) to—

- (a) except where paragraph (6) applies, the complainant (if any) and any interested person; and
- (b) except in a case where it appears to the appropriate authority or the Commissioner (as the case may be) that to do so might prejudice the investigation or any other investigation, the person to whose conduct the investigation relates.

(6) This paragraph applies where the Commissioner or appropriate authority (as the case may be) is of the opinion that the non-disclosure of the information is necessary for a purpose mentioned in regulation 80(2).

(7) Paragraphs (4) and (5) of regulation 80 apply in relation to paragraph (6) of this regulation as they apply in relation to paragraph (2) of that regulation.

### **Combining and splitting investigations**

**38.**—(1) Where an investigation is being carried out under regulation 33, the appropriate authority 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) Where an investigation is being carried out under regulation 34 or 36, the Commissioner may—

- (a) combine that investigation with another investigation; or
- (b) split that investigation into two or more separate investigations,

if the Commissioner considers that it is more efficient and effective, or is otherwise in the public interest, to do so.

(3) In relation to an investigation being carried out under regulation 34, the Commissioner may only take action under paragraph (2) after consultation with the appropriate authority.

- (4) Nothing in this regulation prevents the Commissioner 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.

#### **Change of form of investigation: provision of documentation and evidence**

**39.**—(1) This regulation applies where the Commissioner determines that—

- (a) an investigation being carried out by the Commissioner should instead take the form of an investigation by the appropriate authority on its own behalf or an investigation by that authority under the direction of the Commissioner; or
- (b) an investigation being carried out by the appropriate authority under the direction of the Commissioner should instead take the form of an investigation by the appropriate authority on its own behalf.

(2) The Commissioner must send to the appropriate authority any documentation and evidence gathered during the investigation which will assist the appropriate authority to carry out its functions under this Part.

#### **Suspension of investigation or other procedure**

**40.**—(1) The Commissioner and, subject to paragraph (2), an appropriate authority may suspend any investigation or other procedure under this Part which, in the opinion of the Commissioner or appropriate authority, would, if it were to continue, prejudice—

- (a) any investigation relating to a service offence or disciplinary proceedings; or
- (b) any criminal investigation or criminal proceedings.

(2) The Commissioner may direct that any investigation or other procedure under this Part which is liable to be, or has been, suspended by an appropriate authority under paragraph (1) is to continue, or be resumed, if the Commissioner is of the view that it is in the public interest to make such a direction.

(3) The Commissioner must consult the appropriate authority before making such a direction.

#### **Resumption of investigation of complaint after disciplinary or criminal proceedings**

**41.**—(1) This regulation applies where—

- (a) the Commissioner or an appropriate authority has suspended the whole or part of the investigation of a complaint until the conclusion of disciplinary or criminal proceedings under regulation 40; and
- (b) those proceedings have concluded.

(2) Where the complainant has not indicated—



- (a) a wish for the investigation to start or be resumed; or
- (b) a wish that the investigation is not started or resumed,

the Commissioner or appropriate authority (as the case may be) must write to the complainant to determine how the complainant wishes to proceed.

(3) Where the complainant indicates a wish for the investigation to start or be resumed, the Commissioner or appropriate authority (as the case may be) must start or resume the investigation.

(4) Where the complainant—

- (a) indicates a wish that the investigation is not started or resumed; or
- (b) does not reply to a letter under paragraph (2) within a period of 28 days starting with the day after the letter was sent by the Commissioner or appropriate authority in accordance with paragraph (2),

the Commissioner or appropriate authority (as the case may be) must determine whether it is in the public interest for the complaint to be treated as a recordable conduct matter.

(5) Where the Commissioner or appropriate authority determines that it is not in the public interest for the complaint to be treated as a recordable conduct matter, this Part ceases to apply to the complaint.

(6) Where the Commissioner or appropriate authority determines that it is in the public interest for the complaint to be treated as a recordable conduct matter, Chapter 3 of this Part (handling of conduct matters) applies to the matter.

(7) Subject to paragraph (8), the Commissioner or appropriate authority (as the case may be) must notify the person complained against if paragraph (5) or (6) applies.

(8) Nothing in paragraph (7) requires the Commissioner or appropriate authority to make a notification if the Commissioner or appropriate authority (as the case may be) believes that that might prejudice any investigation relating to a service offence or criminal investigation, any pending disciplinary or criminal proceedings, or would be contrary to the public interest.

### **Complaints and conduct matters concerning a person whose identity is unascertained**

**42.—**(1) Where a complaint or conduct matter relates to the conduct of a person whose identity—

- (a) is unascertained at the time at which the complaint is made or conduct matter is recorded; or
- (b) is not ascertained during, or subsequent to, the investigation of the complaint or conduct matter;

this Part applies in relation to such a person as if it did not include the requirements mentioned in paragraph (2).

(2) The requirements are—

- (a) any requirement for the person complained against or to whose conduct the conduct matter relates to be given a notification or an opportunity to make representations;
- (b) any requirement for the Commissioner or appropriate authority to determine whether a service offence may have been committed by a person whose conduct has been the subject-matter of an investigation, or to take any action in relation to such a determination;
- (c) any requirement for the Commissioner or appropriate authority to determine whether administrative action procedures should be initiated against a person whose conduct is the subject-matter of a report.

(3) Where the identity of a person mentioned in paragraph (1) is subsequently ascertained, the Commissioner and appropriate authority must, so far as possible, proceed in accordance with this Part, regardless of any previous action taken under this Part as modified by paragraph (1).

#### **Investigations by the Commissioner: power to serve information notice**

**43.**—(1) Subject to paragraphs (2) and (3), the Commissioner may serve upon any person an information notice requiring the person to provide the Commissioner with information that the Commissioner reasonably requires for the purposes of an investigation in accordance with regulation 36.

(2) An information notice served under paragraph (1) must not require a person—

- (a) to provide information that might incriminate the person;
- (b) to provide an item subject to legal privilege within the meaning of the Police and Criminal Evidence Act 1984<sup>(13)</sup> (see section 10 of that Act);
- (c) to make a disclosure that would be prohibited by any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016<sup>(14)</sup>;
- (d) to provide information that was provided to the person by, or by an agency of, the government of a country or territory outside the United Kingdom where that government does not consent to the disclosure of the information.

(3) An information notice served under paragraph (1) must not require a postal or telecommunications operator to provide communications data.

(4) In paragraph (3) “communications data”, “postal operator” and “telecommunications operator” have the same meanings as in the Investigatory Powers Act 2016 (see sections 261 and 262 of that Act).

(5) An information notice must—

- (a) specify or describe the information that is required by the Commissioner and the form in which it must be provided;
- (b) specify the period within which the information must be provided;
- (c) give details of the right of appeal against the information notice under regulation 45.

(6) The period specified under paragraph (5)(b) must not end before the end of the period within which an appeal can be brought against the notice and, if such an appeal is brought, the information need not be provided pending the determination or withdrawal of the appeal.

(7) The Commissioner may cancel an information notice by written notice to the person on whom it was served.

#### **Failure to comply with information notice**

**44.**—(1) Where a person who has received an information notice under regulation 43 fails to comply with the notice, the Commissioner may certify the failure—

- (a) if there are reasonable grounds for believing that the premises on which the material is held are located in a part of the United Kingdom, to any court of law in that part of the United Kingdom which has power to commit for contempt;
- (b) otherwise to the High Court in England and Wales.

(2) A person fails to comply with an information notice where they—

- (a) fail or refuse to provide the information required by the notice; or

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<sup>(13)</sup> 1984 c. 60.

<sup>(14)</sup> 2016 c. 25.

(b) knowingly or recklessly provide information in response to the notice that is false in a material respect.

(3) The court of law in the part of the United Kingdom where the premises are located or the High Court may then inquire into the matter and, after hearing any witness who may be produced against or on behalf of the person, and after hearing any statement offered in defence, deal with the person as if the person had committed a contempt of court.

#### **Appeals against information notices**

**45.**—(1) A person on whom an information notice is served may appeal against the notice to the First-tier Tribunal on the ground that the notice is not in accordance with the law.

(2) If the Tribunal considers that the notice is not in accordance with the law—

- (a) it must quash the notice; and
- (b) it may give directions to the Commissioner in relation to the service of a further information notice.

#### **Special procedure where investigation relates to service police**

**46.**—(1) This regulation applies to an investigation where condition A, B or C is satisfied.

(2) Condition A is that—

- (a) the investigation is an investigation of a complaint; and
- (b) during the course of the investigation it appears to the person investigating or, in the case of an investigation by a designated person under regulation 36, the Commissioner, that there is an indication that a member of a service police force to whose conduct the investigation relates may have committed a service offence or behaved in a manner that would justify the initiation of administrative action procedures.

(3) Condition B is that—

- (a) the investigation is an investigation of a complaint being carried out by a person appointed under regulation 34; and
- (b) during the course of the investigation the Commissioner determines that there is an indication that a member of a service police force to whose conduct the investigation relates may have committed a service offence or behaved in a manner that would justify the initiation of administrative action procedures.

(4) Condition C is that—

- (a) the investigation is an investigation of a recordable conduct matter; and
- (b) the investigation relates to the conduct of a member of a service police force.

(5) Where this regulation applies to an investigation, the person investigating must proceed with the investigation in accordance with regulations 47 to 52.

#### **Special procedure: severity assessment**

**47.**—(1) In the case of an investigation under regulation 34, the person investigating must, as soon as is reasonably practicable—

- (a) form an opinion as to whether the conduct alleged, if proved, would amount to misconduct that is so serious as to justify the initiation of administrative action procedures or to gross misconduct;
- (b) notify the Commissioner of that opinion; and

- (c) refer the case to the Commissioner, for the Commissioner to make a severity assessment in relation to the conduct of the person concerned.
- (2) In the case of an investigation under regulation 36 other than by the Commissioner acting personally, the person investigating must, as soon as is reasonably practicable, refer the case to the Commissioner, for the Commissioner to make a severity assessment in relation to the conduct of the person concerned.
- (3) In any other case, the person investigating must, as soon as is reasonably practicable, make a severity assessment in relation to the conduct of the person concerned.
- (4) A severity assessment may only be made after consultation with the appropriate authority.

**Special procedure: notification of severity assessment etc.**

**48.**—(1) Except where paragraph (4) applies, on the completion of a severity assessment, the person investigating must give the person concerned a notification stating—

- (a) the conduct that is the subject matter of the allegation and how that conduct is alleged to fall below the professional standards;
  - (b) that there is to be an investigation into the matter and the identity of the person investigating;
  - (c) the result of the severity assessment;
  - (d) the effect of regulation 50; and
  - (e) that whilst the person concerned does not have to say anything it may harm the person's case if the person does not mention when interviewed or when providing any information under regulation 50 something later relied on in any administrative action procedures.
- (2) Where a notification is given under paragraph (1), the person investigating must—
- (a) except where paragraph (4) applies, provide a copy of the terms of reference of the investigation to the person concerned; or
  - (b) where paragraph (4) applies, give the person concerned a notice stating that the terms of reference of the investigation are not being provided and explaining why,

where practicable, at the same time as the notification is given under paragraph (1), or otherwise within a period of five working days starting with the first working day after the day on which such notice is given.

(3) Except where paragraph (4) applies, where a copy of the terms of reference of the investigation has been provided under paragraph (2) and those terms are revised, the person investigating must provide a copy of the revised terms to the person concerned as soon as practicable.

- (4) This paragraph applies for so long as—
- (a) in the case of an investigation under regulation 34 or 36, the Commissioner; or
  - (b) in the case of an investigation under regulation 33, the person investigating the complaint or matter,

considers that giving the notification or providing a copy of the terms, or revised terms, of reference of the investigation might prejudice the investigation or any other investigation.

(5) A copy of the terms, or revised terms, of reference of the investigation provided under paragraph (2) or (3) may be in a form which keeps anonymous the identity of the complainant (if any) or any other person.

(6) On the completion of a severity assessment, the person investigating must notify the appropriate authority of the result of the assessment.

(7) A notification under paragraph (1) and a copy of the terms, or revised terms, of reference of the investigation under paragraph (2) or (3) must be—

- (a) given to the person concerned in person;
- (b) left with a person at, or sent by recorded delivery to, the last known address of the person concerned; or
- (c) given to the person concerned in any other manner agreed between the person investigating and the person concerned.

### **Special procedure: revision of severity assessment**

**49.**—(1) Where in the case of an investigation under—

- (a) regulation 34; or
- (b) regulation 36 other than by the Commissioner acting personally,

the Commissioner has made a severity assessment and indicates that it is appropriate to revise the assessment, the person investigating must refer the case to the Commissioner for the Commissioner to revise the assessment.

(2) Where in the case of an investigation under—

- (a) regulation 34; or
- (b) regulation 36 other than by the Commissioner acting personally,

the Commissioner has made a severity assessment and the person investigating forms the opinion that it is appropriate to revise that assessment, the person investigating must notify the Commissioner of that opinion.

(3) Where in any other case the person investigating has made a severity assessment and considers it appropriate to do so, the person investigating may revise the assessment.

(4) A severity assessment may only be revised after consultation with the appropriate authority.

(5) On the revision of a severity assessment, the person investigating must notify—

- (a) the appropriate authority; and
- (b) except where paragraph (6) applies, the person concerned,

of the result of the revision.

(6) This paragraph applies for so long as—

- (a) in the case of an investigation under regulation 34 or 36, the Commissioner; or
- (b) in the case of an investigation under regulation 33, the person investigating the complaint or matter,

considers the notification to the person concerned might prejudice the investigation or any other investigation.

(7) A notification under paragraph (5)(b) must be—

- (a) given to the person concerned in person;
- (b) left with a person at, or sent by recorded delivery to, the last known address of the person concerned; or
- (c) given to the person concerned in any other manner agreed between the person investigating and the person concerned.

### **Special procedure: representations to the person investigating**

**50.**—(1) This regulation applies where the person investigating a complaint or matter has provided the person concerned with a copy of the terms of reference of the investigation, or given the person concerned a notice, under regulation 48(2).

- (2) Where in the case of an investigation under—
- (a) regulation 34; or
  - (b) regulation 36 other than by the Commissioner acting personally,

the person concerned provides the person investigating the complaint or matter with a relevant statement or relevant document before the expiry of the time limit mentioned in paragraph (4), the person investigating must send the statement or document to the Commissioner for consideration.

(3) Where, in any other case, the person concerned provides the person investigating the complaint or matter with a relevant statement or relevant document before the expiry of the time limit mentioned in paragraph (4), the person investigating must consider the statement or document.

(4) The time limit is 10 working days starting with the day after the day on which a copy of the terms of reference of the investigation is provided, or a notice is given, under regulation 48(2), unless this period is extended by—

- (a) the person investigating; or
- (b) in the case of an investigation under regulation 36 other than by the Commissioner acting personally, the Commissioner.

### **Special procedure: interview of the person concerned**

**51.**—(1) This regulation applies where the person investigating a complaint or matter has provided the person concerned with a copy of the terms of reference of the investigation, or given the person concerned a notice under regulation 48(2).

(2) In the case of an investigation under regulation 36 other than by the Commissioner acting personally, if the Commissioner wishes the person concerned to be interviewed as part of the investigation, the person investigating must refer the case to the Commissioner for the Commissioner—

- (a) if reasonably practicable, to agree a date and time for the interview with the person concerned;
- (b) where no date and time is agreed, to specify a date and time for the interview.

(3) In any other case, if the person investigating wishes to interview the person concerned as part of the investigation, the person investigating must—

- (a) if reasonably practicable, agree a date and time for the interview with the person concerned;
- (b) where no date and time is agreed, specify a date and time for the interview.

(4) Where a date and time is specified under paragraph (2) or (3) and —

- (a) the person concerned will not be available at that time; and
- (b) the person concerned proposes an alternative time which satisfies paragraph (5),

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

(5) An alternative time proposed by the person concerned must—

- (a) be reasonable; and
- (b) fall before the end of the period of five working days starting with the first working day after the day specified by the person investigating or the Commissioner.

- (6) The person investigating must give the person concerned—
  - (a) a notice stating the date, time and place of the interview; and
  - (b) such information as the person investigating or, in the case of an investigation under regulation 36 other than by the Commissioner acting personally, the Commissioner considers appropriate in the circumstances of the case to enable the person concerned to prepare for the interview.
- (7) The person concerned must attend the interview.

### **Special procedure: duty to provide information to appropriate authority**

**52.**—(1) In a case where the Commissioner or the person investigating has made a severity assessment under regulation 47, subject to paragraph (2), the person investigating must provide the appropriate authority with such information in that person's possession as the authority may reasonably request for the purpose mentioned in paragraph (3).

(2) Where the appropriate authority is the Provost Marshal for serious crime, the person investigating must provide the information for the purpose mentioned in paragraph (3), to the Provost Marshal of the service police force of which the person whose conduct is being investigated is a member.

(3) The purpose is determining whether the person concerned should be, or should remain, suspended from serving as a service police officer.

### **Procedure for interviews of witnesses who are members of the service police forces during certain investigations**

**53.**—(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 regulation 34; or
- (b) is carried out by a person designated under regulation 36.

(2) Where a member of a service police force is required for interview as part of an investigation to which this regulation applies, the relevant investigator, or in the case of an investigation by a designated person under regulation 36 who is not the Commissioner, the Commissioner must give written notice to that member that the interview will take place in accordance with this regulation, and if reasonably practicable, agree a date and time for the interview with that member.

(3) Where no date and time is agreed under paragraph (2), the relevant investigator, or, in the case of an investigation by a designated person under regulation 36 who is not the Commissioner, the Commissioner, must specify a date and time for the interview.

- (4) Where a date and time is specified under paragraph (3) and—
  - (a) the member required for interview or the member's accompanying person will not be available at that time; and
  - (b) the member proposes an alternative time which satisfies paragraph (5), the interview must be postponed to the time proposed by that member.
- (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 relevant investigator or, in the case of an investigation by a designated person under regulation 36 who is not the Commissioner, the Commissioner.

(6) The member required for interview must be given written notice of the date, time and place of the interview.

(7) The relevant investigator or, in the case of an investigation by a designated person under regulation 36 who is not the Commissioner, the Commissioner must, in advance of the interview, provide the member required for interview with such information as that person considers appropriate in the circumstances of the case to enable the member to prepare for the interview.

(8) The member required for interview must attend the interview.

(9) During an interview, the accompanying person may not answer any questions asked of the member required for interview.

(10) Where an accompanying person is a member of a service police force, the Provost Marshal under whose direction that officer comes must permit that person to use a reasonable amount of duty time for the purposes of this regulation.

(11) Nothing in this regulation applies, in the case of an investigation to which regulation 46 applies, to an interview of a member of a service police force who is the person concerned in relation to the investigation (within the meaning of that regulation).

(12) In this regulation—

- (a) “accompanying person” means a person nominated by the member of the service police force to be interviewed and who is not otherwise involved in the matter;
- (b) “relevant investigator” means a person appointed or designated to investigate under regulation 34 or 36.

#### **Restrictions on proceedings pending the conclusion of an investigation**

**54.**—(1) No disciplinary proceedings or administrative action procedures can be brought or initiated in relation to any matter which is the subject of an investigation in accordance with the provisions of this Part until—

- (a) a report on that investigation has been submitted to the Commissioner or to the appropriate authority under regulation 56 or 60; or
- (b) where under regulation 36 the Commissioner has personally carried out the investigation, a report has been completed by the Commissioner.

(2) The restrictions imposed by this regulation in relation to the bringing of disciplinary proceedings do not apply to the bringing of proceedings by the appropriate prosecutor in any case in which it appears to the prosecutor that there are exceptional circumstances which make it undesirable to delay the bringing of such proceedings.

#### **Procedure where conduct matter is revealed during investigation of DSI matter**

**55.**—(1) If during the course of an investigation of a DSI matter it appears to a person appointed under regulation 34 that there is an indication that a member of a service police force (“the person whose conduct is in question”) may have—

- (a) committed a service offence; or
- (b) behaved in a manner that would justify initiating administrative action procedures,

the person appointed must make a submission to that effect to the Commissioner.

(2) If, after considering a submission under paragraph (1), the Commissioner determines that there is such an indication, the Commissioner must—

- (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 the Commissioner’s 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 being carried out by a person appointed under regulation 34 the Commissioner determines (without there having been a submission under paragraph (1)) that there is an indication that a member of a service police force (“the person whose conduct is in question”) may have—

- (a) committed a service offence; or
- (b) behaved in a manner that would justify initiating administrative action procedures,

the Commissioner must 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 the Commissioner’s determination.

(4) If during the course of an investigation of a DSI matter being carried out by a person designated under regulation 36 the Commissioner determines that there is an indication that a member of a service police force (“the person whose conduct is in question”) may have—

- (a) committed a service offence; or
- (b) behaved in a manner which would justify initiating administrative action procedures,

the Commissioner must proceed under paragraph (5).

(5) The Commissioner must—

- (a) prepare a record of the determination;
- (b) 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 the determination; and
- (c) send to it (or each of them) a copy of the record of the determination prepared under paragraph (a).

(6) If during the course of an investigation of a DSI matter it appears to a person appointed under regulation 33 that there is an indication that a member of a service police force (“the person whose conduct is in question”) may have—

- (a) committed a service offence; or
- (b) behaved in a manner which would justify initiating administrative action procedures,

the person appointed must make a submission to that effect to the appropriate authority in relation to the DSI matter.

(7) If, after considering a submission under paragraph (6), the appropriate authority determines that there is such an indication, the authority must—

- (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 (6); and
- (b) notify the Commissioner of its determination and send to it a copy of the submission under paragraph (6).

(8) Where the appropriate authority in relation to the person whose conduct is in question—

- (a) is notified of a determination by the Commissioner under paragraph (2) or (3);
- (b) is notified of a determination by the Commissioner under paragraph (5);
- (c) makes (in a case where it is also the appropriate authority in relation to the DSI matter) a determination under paragraph (7); or
- (d) is (in a case where it is not the appropriate authority in relation to the DSI matter) notified by that other authority of a determination by it under paragraph (7),

it must record the matter under regulation 22 as a conduct matter.

(9) Where a DSI matter is recorded under regulation 22 as a conduct matter by virtue of paragraph (8)—

- (a) the person investigating the DSI matter must (subject to any determination made by the Commissioner under regulation 32(9) or (10)) continue the investigation as if appointed or designated to investigate the conduct matter; and
- (b) the other provisions of this Part apply in relation to that matter accordingly.

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

**56.**—(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 33 must submit a report of the investigation to the appropriate authority.

(3) A person appointed under regulation 34 must—

- (a) submit a report of the investigation to the Commissioner; and
- (b) send a copy of that report to the appropriate authority.

(4) In relation to a matter that was formerly a DSI matter but has been recorded as a conduct matter in pursuance of regulation 55(8), the references in paragraphs (2) and (3) to the appropriate authority are references to—

- (a) the appropriate authority in relation to the DSI matter; and
- (b) (where different) the appropriate authority in relation to the person whose conduct is in question.

(5) A person designated under regulation 36 as the person in charge of an investigation must—

- (a) submit a report on the investigation to the Commissioner; or
- (b) where the person in charge of the investigation is the Commissioner acting personally, complete a report on the investigation.

(6) A person submitting or, in the case of an investigation under regulation 36 by the Commissioner personally, completing a report under this regulation must 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.

(7) Where a person would contravene regulation 81 by submitting, or (as the case may be) sending a copy of, a report in its entirety to the appropriate authority under paragraph (2) or (3)(b), the person must instead submit, or send a copy of, the report after having removed or obscured the information which by virtue of regulation 81 the person must not disclose.

(8) A report on an investigation to which regulation 46 applies must—

- (a) include an accurate summary of the evidence;
- (b) be accompanied by, or refer to, any relevant documents; and
- (c) include the opinion of the person investigating as to whether any person to whose conduct the investigation related has a case to answer in respect of misconduct or gross misconduct or has no case to answer.

(9) A person who has submitted or, in the case of an investigation under regulation 36 by the Commissioner personally, completed a report under this regulation on an investigation to which regulation 46 applies must supply the appropriate authority with such copies of further documents or other items in that person's possession as the authority may request except so far as the person is prevented from doing so by regulation 81.

(10) The appropriate authority may only make a request under paragraph (9) 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 (11).

(11) Those purposes are to—

- (a) enable administrative action procedures to be initiated; and
- (b) ensure that any such person receives a fair hearing with respect to any administrative action procedures relating to their conduct.

### **Action by the Commissioner in relation to an investigation report under regulation 56**

57.—(1) This regulation applies where—

- (a) a report on an investigation carried out under the direction of the Commissioner is submitted to the Commissioner under regulation 56(3); or
- (b) a report on an investigation carried out by a person designated by the Commissioner is submitted to the Commissioner, or is otherwise completed, under regulation 56(5).

(2) But if, following the submission or completion of such a report, the Commissioner determines under regulation 63 that the complaint or recordable conduct matter is to be re-investigated, the provisions of this regulation other than paragraph (3)(a) (read with paragraph (4)) do not apply, or cease to apply, in relation to that report.

(3) On receipt of the report (or on its completion by the Commissioner), the Commissioner must—

- (a) if it appears that the appropriate authority has not already been sent a copy of the report, send a copy of the report to that authority;
- (b) determine whether the conditions set out in paragraphs (5) and (6) are satisfied in respect of the report;
- (c) if the Commissioner determines that those conditions are so satisfied, notify the appropriate prosecutor of the determination and send a copy of the report to the appropriate prosecutor; and
- (d) notify the appropriate authority and the persons mentioned in paragraph (8) of the Commissioner's determination under sub-paragraph (b) and of any action taken by the Commissioner under sub-paragraph (c).

(4) Where the Commissioner would contravene regulation 81 by sending a copy of a report in its entirety to the appropriate authority under paragraph (3)(a) or to the appropriate prosecutor under paragraph (3)(c), the Commissioner must instead send a copy of the report after having removed or obscured the information which by virtue of regulation 81 the Commissioner must not disclose.

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

(6) The second condition is that the circumstances are such that, in the opinion of the Commissioner, it is appropriate for the matters dealt with in the report to be considered by the appropriate prosecutor.

(7) The appropriate prosecutor must notify the Commissioner of any decision of that person 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 appropriate prosecutor under paragraph (3)(c).

(8) The 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 78; 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.
- (9) On receipt of the report (or on its completion by the Commissioner), the Commissioner must also—
- (a) seek the views of the appropriate authority on—
    - (i) whether any person to whose conduct the investigation related has a case to answer in relation to misconduct or gross misconduct or has no case to answer; and
    - (ii) any other matter dealt with in the report (but not on whether the conditions in paragraphs (5) and (6) are satisfied in respect of the report);
  - (b) having considered the views (if any) of the appropriate authority, make a determination as to the matter described in sub-paragraph (a)(i) and whether or not administrative action procedures should be initiated against any person to whose conduct the investigation related;
  - (c) having considered the views (if any) of the appropriate authority and if the Commissioner considers it appropriate to do so, make a determination as to any other matter arising from sub-paragraph (a)(ii), being a determination other than one that the Commissioner is required to make under paragraph (3)(b) of this regulation or sub-paragraph (b) of this paragraph;
  - (d) notify the appropriate authority of the Commissioner’s determination under sub-paragraph (b) and any determination under sub-paragraph (c);
  - (e) direct the appropriate authority to determine what action (if any) the appropriate authority will in its discretion take, in respect of the matters dealt with in the report and having regard to the Commissioner’s determination under sub-paragraph (b) and any determination under sub-paragraph (c).
- (10) On completion of an investigation where the Commissioner seeks the views of the appropriate authority on the matters mentioned in paragraph (9)(a), the Commissioner must notify the appropriate authority of the Commissioner’s opinion as to whether any person to whose conduct the investigation related has a case to answer in respect of misconduct or gross misconduct or has no case to answer.
- (11) The appropriate authority must provide the Commissioner with its views (if any) on the matters mentioned in paragraph (9)(a) before the expiry of 28 days starting with the day after the day on which the Commissioner seeks the appropriate authority’s views in accordance with paragraph (9) (a), unless this period is extended by the Commissioner.
- (12) The appropriate authority must comply with the direction given under paragraph (9)(e) and must notify the Commissioner of the determination it makes.
- (13) On receipt of the report, where it is a report of an investigation of a complaint, the Commissioner may also make a recommendation under regulation 68.
- (14) In relation to a DSI matter in respect of which a determination has been made under regulation 55(2), (3), (4) or (7), the references in this regulation to the appropriate authority are references to the appropriate authority in relation to the person whose conduct is in question.

#### **Action by the appropriate authority in response to an investigation report under regulation 56**

**58.**—(1) This regulation applies where a report of an investigation is submitted to the appropriate authority in accordance with regulation 56(2).

- (2) On receipt of the report, the appropriate authority must—
- (a) determine whether the conditions set out in paragraphs (3) and (4) are satisfied in respect of the report;
  - (b) if it determines that those conditions are so satisfied, notify the appropriate prosecutor of the determination and send a copy of the report to the appropriate prosecutor; and
  - (c) notify the persons mentioned in paragraph (6) of its determination under sub-paragraph (a) and of any action taken by it under sub-paragraph (b).
- (3) The first condition is that the report indicates that a service offence may have been committed by a person (if any) to whose conduct the investigation related.
- (4) The second condition is that the circumstances are such that, in the opinion of the appropriate authority, it is appropriate for the matters dealt with in the report to be considered by the appropriate prosecutor.
- (5) The appropriate prosecutor must notify the appropriate authority of the appropriate prosecutor's decision 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 appropriate prosecutor under paragraph (2).
- (6) The 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 78; 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.
- (7) On receipt of the report, the appropriate authority must also—
- (a) determine whether any person to whose conduct the investigation related has a case to answer in respect of misconduct or gross misconduct or has no case to answer;
  - (b) if it considers it appropriate to do so, make a determination as to any matter dealt with in the report, being a determination other than one that it is required to make by paragraph (2) (a) or sub-paragraph (a) of this paragraph; and
  - (c) determine what action (if any) the authority will in its discretion take in respect of the matters dealt with in the report.
- (8) Where the report is a report of an investigation of a complaint and the appropriate authority is the Defence Council or a Board, the appropriate authority may also, on receipt of the report, make a recommendation under regulation 68.
- (9) The appropriate authority must—
- (a) take the action which it determines under paragraph (7) that it will in its discretion, take; and
  - (b) in a case where that action consists of or includes the initiation of administrative action procedures, secure that those proceedings, once brought, are proceeded with to a proper conclusion.
- (10) In relation to a DSI matter in respect of which a determination has been made under regulation 55(2), (3), (4) or (7), the references in this regulation to the appropriate authority are references to the appropriate authority in relation to the person whose conduct is in question.

#### **Provision of copy of report on investigation etc. to person to whose conduct the investigation related**

- 59.—(1) Except where paragraph (2) applies, where—
- (a) the Commissioner does not determine under regulation 57(9)(b) that administrative action procedures should be initiated; or

- (b) the appropriate authority determines under regulation 58(7) that the officer concerned does not have a case to answer for misconduct or gross misconduct,

the Commissioner or appropriate authority (as the case may be) must provide the person with a copy of the report on the investigation or such parts of it as relate to the person.

(2) This paragraph applies for so long as the Commissioner or appropriate authority (as the case may be) believes that providing a copy of the report, or part of it, under paragraph (1) might prejudice any investigation or proceedings or review under regulation 64.

(3) A copy of the report, or part of it, provided under paragraph (1) may be in a form which keeps anonymous the identity of the complainant (if any) or any other person.

(4) Where the Commissioner or appropriate authority would contravene regulation 81 by providing a copy of the report, or part of it, under paragraph (1), the Commissioner or appropriate authority must instead provide the copy having removed or obscured the information which by virtue of regulation 81 must not be disclosed.

### **Final reports on investigations: other DSI matters**

**60.**—(1) This regulation applies on the completion of an investigation of a DSI matter in respect of which neither the Commissioner nor the appropriate authority has made a determination under regulation 55(2), (3), (4) or (7).

(2) The person investigating must—

- (a) submit a report on the investigation to the Commissioner; and
- (b) send a copy of that report to the appropriate authority.

(3) Paragraph (2)(a) does not apply where the person investigating is the Commissioner carrying out an investigation personally under regulation 36, but the Commissioner must complete a report on the investigation.

(4) A person submitting a report to the Commissioner under paragraph (2) or completing one under paragraph (3) is not prevented by any obligation of secrecy imposed by any rule of law or otherwise from including all such matters in that report as that person thinks fit.

(5) Where a person would contravene regulation 81 by sending a copy of a report in its entirety to the appropriate authority under paragraph (2)(b), the person must instead send a copy of the report after having removed or obscured the information which by virtue of regulation 81 the person must not disclose.

(6) On receipt of the report (or on its completion by the Commissioner), the Commissioner must determine whether the report indicates that a member of a service police force may have—

- (a) committed a service offence; or
- (b) behaved in such a manner that would justify the initiation of administrative action procedures.

(7) On receipt of the report (or on its completion by the Commissioner), the Commissioner must also, if the Commissioner considers it appropriate to do so, make a determination as to any matter dealt with in the report, being a determination other than one that the Commissioner is required to make under paragraph (6).

(8) But paragraphs (6) and (7) and regulation 61 do not apply, or cease to apply, in relation to a report submitted under paragraph (2) or completed under paragraph (3) if, following the submission or completion of the report, the Commissioner determines under regulation 63 that the DSI matter is to be re-investigated.

### **Action by the Commissioner in relation to an investigation report under regulation 60**

**61.**—(1) If the Commissioner determines under regulation 60(6) that the report indicates that a member of a service police force may have—

- (a) committed a service offence; or
- (b) behaved in a manner that would justify the initiation of administrative action procedures,

the Commissioner must notify the appropriate authority in relation to the person whose conduct is in question of the Commissioner's 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) Paragraph (5) of regulation 60 applies for the purposes of paragraph (1) as it applies for the purposes of paragraph (2)(b) of that regulation.

(3) Where the appropriate authority in relation to the person whose conduct is in question is notified of a determination by the Commissioner under paragraph (1), it must record the matter under regulation 22 as a conduct matter.

(4) Where a DSI matter is recorded under regulation 22 as a conduct matter by virtue of paragraph (3)—

- (a) the person investigating the DSI matter must (subject to any determination made by the Commissioner under regulation 32(9) or (10)) investigate the conduct matter as if appointed or designated to do so; and
- (b) the other provisions of this Part apply in relation to that matter accordingly.

### **Appropriate authority to notify the Commissioner of outcome of administrative action procedures etc.**

**62.** The appropriate authority must notify the Commissioner of the outcome of any administrative action procedures brought in relation to, or arising from, any matter dealt with in a report submitted or completed under regulation 56 or 60, as soon as practicable after the outcome of the procedure.

### **Power of the Commissioner to require re-investigation**

**63.**—(1) This regulation applies where—

- (a) a report on an investigation of a complaint, recordable conduct matter or DSI matter carried out under the direction of the Commissioner has been submitted to the Commissioner under regulation 56(3) or 60(2);
- (b) a report on an investigation of a complaint, recordable conduct matter or DSI matter carried out by a person designated by the Commissioner has been submitted to the Commissioner (or, in the case of an investigation carried out under regulation 36 by the Commissioner personally, is otherwise completed by the Commissioner) under regulation 56(5) or 60(2).

(2) The Commissioner may at any time determine that the complaint, recordable conduct matter or DSI matter is to be re-investigated if the Commissioner is satisfied that there are compelling reasons for doing so.

(3) Where the Commissioner makes a determination under paragraph (2), the Commissioner must determine that the re-investigation is to take the form of an investigation by the Commissioner unless paragraph (4) applies, in which case the Commissioner must determine that the re-investigation is to take the form described in that paragraph.

(4) This paragraph applies where the Commissioner determines that it would be more appropriate for the re-investigation to take the form of an investigation by the appropriate authority under the direction of the Commissioner.

(5) Where—

- (a) the Commissioner determines under paragraph (3) or (7) that a re-investigation is to take the form of an investigation by the Commissioner; and
- (b) at any time after that the Commissioner determines that paragraph (4) applies in relation to the re-investigation,

the Commissioner may make a further determination under this regulation (to replace the earlier one) that the re-investigation is instead to take the form of an investigation by the appropriate authority under the direction of the Commissioner.

(6) Where the Commissioner determines under paragraph (3) or (5) that a reinvestigation is to take the form of an investigation by the appropriate authority under the direction of the Commissioner, the Commissioner must keep under review whether paragraph (4) continues to apply in relation to the re-investigation.

(7) If, on such a review, the Commissioner determines that paragraph (4) no longer applies in relation to a re-investigation, the Commissioner must make a further determination under this regulation (to replace the earlier one) that the re-investigation is instead to take the form of an investigation by the Commissioner.

(8) Paragraphs (11) and (12) of regulation 32 apply in relation to a further determination under paragraph (5) or (7) as they apply in the case of a further determination under paragraph (9) or (10) of that regulation.

(9) This Part applies in relation to any re-investigation in pursuance of a determination under this regulation as it applies in relation to any investigation in pursuance of a determination under regulation 32.

(10) The Commissioner must notify the appropriate authority of any determination that the Commissioner makes under this regulation and of the Commissioner's reasons for making the determination.

(11) The Commissioner must also notify the following of any determination that the Commissioner makes under this regulation and of the Commissioner's reasons for making the determination—

- (a) every person entitled to be kept properly informed in relation to the complaint, recordable conduct matter or DSI matter (as the case may be) under regulation 78;
- (b) where the determination is made in relation to a complaint, the complainant;
- (c) the person to whose conduct the re-investigation will relate.

(12) The duty imposed by paragraph (11) on the Commissioner has effect subject to the exceptions provided for by regulation 67.

(13) In relation to a matter that was formerly a DSI matter but was recorded as a conduct matter in pursuance of regulation 55(8), the reference in paragraph (10) to the appropriate authority is a reference to the appropriate authority in relation to the person whose conduct was in question.

(14) The reference to a report in paragraph (1) includes a report on a re-investigation by virtue of this regulation or regulation 64.

### **Reviews with respect to an investigation and recommendations by relevant review bodies**

**64.**—(1) Where a complaint has been subjected to an investigation by the appropriate authority on its own behalf, the complainant has the right to apply to the relevant review body for a review of the outcome of the complaint.

(2) The relevant review body must notify the following of an application for a review under paragraph (1)—

- (a) the appropriate authority;



- (b) every person entitled to be kept properly informed in relation to the complaint under regulation 78; and
  - (c) the person complained against (if any).
- (3) Where an application for a review is made to the Commissioner and the Defence Council or a Board is the relevant review body in relation to the review, the Commissioner must—
- (a) forward the application to that body; and
  - (b) notify the person who applied for the review that the Defence Council or that Board (as the case may be) is the relevant review body and that the application has been forwarded to it.
- (4) Where an application for a review is made to the Defence Council or a Board and the Commissioner is the relevant review body in relation to the review, it must—
- (a) forward the application to the Commissioner; and
  - (b) notify the person who applied for the review that the Commissioner is the relevant review body and that the application has been forwarded to the Commissioner.
- (5) Where an application for a review has been forwarded under paragraph (3) or (4), it is treated as having been made on the date it was forwarded to the relevant review body.
- (6) Where the relevant review body so requires on the making of an application for a review under paragraph (1), the appropriate authority must provide the relevant review body with—
- (a) a copy of the report of the investigation; and
  - (b) such information concerning the authority's determinations under regulation 58 as is described in a notification given by the relevant review body to the authority.
- (7) On a review applied for under paragraph (1), the relevant review body must determine whether the outcome of the complaint is a reasonable and proportionate outcome.
- (8) In making a determination under paragraph (7), the relevant review body may review the findings of the investigation.
- (9) Where the Commissioner is the relevant review body and finds that the outcome is not a reasonable and proportionate outcome, the Commissioner may—
- (a) make findings in place of, or in addition to, findings of the investigation;
  - (b) direct that the complaint be re-investigated;
  - (c) make a recommendation to the appropriate authority in respect of any member of a service police force where—
    - (i) it appears to the Commissioner that the officer has a case to answer in respect of misconduct or gross misconduct or has no case to answer in relation to the officer's conduct to which the investigation related; and
    - (ii) the officer's conduct appears to justify the initiation of administrative action procedures;
  - (d) make a recommendation under regulation 68.
- (10) Where a recommendation has been made to an appropriate authority under paragraph (9) (c), the appropriate authority must notify the Commissioner whether or not it accepts the recommendation, and—
- (a) where it accepts the recommendation, it must notify the Commissioner of the steps that it is proposing to take to give effect to it; or
  - (b) if it does not accept the recommendation, it must notify the Commissioner of the reasons for not accepting it.

(11) Where the appropriate authority notifies the Commissioner under paragraph (10), the Commissioner must notify the complainant and every person entitled to be kept properly informed in relation to the complaint under regulation 78 that—

- (a) the recommendation has been accepted, and of the steps that have been, or are to be taken, by the appropriate authority to give effect to it; or
- (b) the recommendation has not been accepted and the reasons for the decision.

(12) Where the Defence Council or a Board is the relevant review body and that body finds that the outcome is not a reasonable and proportionate outcome, the body may—

- (a) make a recommendation to the appropriate authority that the complaint be re-investigated by the authority on its own behalf;
- (b) where the complaint has not previously been referred to the Commissioner under regulation 13, make a recommendation to the appropriate authority that it refer the complaint to the Commissioner under paragraph (2) of that regulation;
- (c) make a recommendation to the appropriate authority in respect of any member of a service police force where—
  - (i) it appears to the Commissioner that the officer has a case to answer in respect of misconduct or gross misconduct or has no case to answer in relation to the officer's conduct to which the investigation related;
  - (ii) the officer's conduct appears to justify the initiation of administrative action procedures;
- (d) make a recommendation under regulation 68.

(13) Paragraph (14) applies where—

- (a) on a review applied for under paragraph (1), the relevant review body determines that the report of the investigation indicates that a service offence may have been committed by a person (if any) to whose conduct the investigation related; and
- (b) the circumstances are such that, in the opinion of the relevant review body, it is appropriate for the matters dealt with in the report to be considered by the appropriate prosecutor.

(14) Where this paragraph applies—

- (a) if the Commissioner is the relevant review body, the Commissioner must notify the appropriate prosecutor of the determination under paragraph (13) and send the appropriate prosecutor a copy of the report;
- (b) if the Defence Council or a Board is the relevant review body, that body must make a recommendation to the appropriate authority that the appropriate authority—
  - (i) notify the appropriate prosecutor of the determination under paragraph (13); and
  - (ii) send the appropriate prosecutor a copy of the report.

(15) Where a recommendation is made under paragraph (12)(a), (b) or (c) or (14)(b)—

- (a) the body or person to whom the recommendation is made must provide to the relevant review body making the recommendation a written response stating—
  - (i) whether the body or person to whom the recommendation is made accepts the recommendation;
  - (ii) if the body or person does accept the recommendation, the steps that the body or person is proposing to take to give effect to the recommendation;
  - (iii) if the body or person does not accept the recommendation, the reasons why that body or person does not;

- (b) subject to paragraph (c)(ii), the body or person to whom the recommendation is made must provide the response mentioned in paragraph (a) before the end of the period of 28 days starting with the day after the day on which the recommendation was made;
  - (c) the relevant review body making the recommendation—
    - (i) may extend the period mentioned in paragraph (b) and if the relevant review body does so, the body or person to whom the recommendation is made must provide the response before the end of the extended period;
    - (ii) must send a copy of the recommendation and the response to it to—
      - (aa) the complainant concerned;
      - (bb) any interested person; and
      - (cc) except in a case where it appears to the relevant review body making the recommendation that to do so might prejudice any investigation, the person complained against (if any).
- (16) The relevant review body must give notification of the outcome of a review under this paragraph and of its reasons for the determination made under paragraph (7)—
- (a) to the appropriate authority;
  - (b) to the complainant concerned;
  - (c) to every person entitled to be kept properly informed in relation to the complaint under regulation 78; and
  - (d) except in a case where it appears to the relevant review body that to do so might prejudice any re-investigation of the complaint, to the person complained against (if any).
- (17) The appropriate authority must comply with any directions given to it under this regulation.
- (18) In this regulation—
- (a) “complainant concerned” means the complainant who applied under paragraph (1);
  - (b) references in relation to an investigation to the outcome of the complaint do not include the outcome of any disciplinary or criminal proceedings or administrative action procedures brought in relation to any matter which was the subject of the investigation.

### **Application for reviews under regulations 18 and 64**

- 65.**—(1) This regulation applies to reviews under—
- (a) regulation 18 (reviews relating to complaints dealt with other than by investigation);
  - (b) regulation 64 (reviews with respect to an investigation).
- (2) Subject to paragraphs (3) and (4), an application for a review must be made within a period of 28 days starting with the day after the day on which the information mentioned in regulation 78(10)(c) was provided to the complainant.
- (3) For the purposes of calculating the period mentioned in paragraph (2), the following is to be left out of account—
- (a) any time elapsing between the application for a review being received by the Commissioner under regulation 64(3) and being forwarded to the relevant review body;
  - (b) any time elapsing between the application for a review being received by the Defence Council or a Board under regulation 64(4) and being forwarded to the Commissioner.
- (4) The relevant review body may extend the period mentioned in paragraph (2) in any case where it is satisfied that, because of the special circumstances of the case, it is just to do so.
- (5) Subject to paragraph (6), an application for a review must be made in writing and must state—

- (a) details of the complaint;
- (b) the date on which the complaint was made;
- (c) the name of the appropriate authority whose decision is the subject of the application; and
- (d) the date on which the information mentioned in regulation 78(10)(c) was provided to the complainant.

(6) Where the relevant review body receives an application for a review which fails to comply with one or more of the requirements mentioned in paragraph (5), it may decide to proceed as if those requirements had been complied with.

(7) Where the relevant review body receives an application for a review, subject to paragraph (8), it must request any information from any person which it considers necessary to dispose of the review.

(8) Paragraphs (2) to (4) of regulation 43 apply to a request for information under paragraph (7) as they apply to an information notice served under regulation 43.

(9) The relevant review body must comply with its duty under regulation 18(4) or 64(7) (duty to determine whether outcome of complaint is reasonable and proportionate) as soon as practicable.

#### **Re-investigations following a review**

**66.**—(1) Where the Commissioner directs under regulation 64 that a complaint be re-investigated, the Commissioner must make a determination of the form that the re-investigation should take.

(2) Paragraphs (4) to (12) of regulation 32 apply in relation to a determination under paragraph (1) as they apply in the case of a determination under that regulation.

(3) Where, following a recommendation under regulation 64(12)(a) in relation to a complaint, the appropriate authority determines that it is appropriate for it to re-investigate the complaint on its own behalf, paragraphs (4) to (6) of regulation 33 apply in relation to the re-investigation as they apply in relation to an investigation to which regulation 33 applies.

(4) The other provisions of this Part (including this regulation) apply, in relation to any re-investigation in pursuance of a direction under regulation 64(9)(b) and any re-investigation of the type described in paragraph (3) of this regulation as they apply in relation to any investigation in pursuance of a determination under regulation 32.

(5) Where the Commissioner determines under paragraph (1) that the re-investigation should take the form of an investigation by the appropriate authority on its own behalf, the Commissioner may also give the appropriate authority such directions as to the handling of the matter in future as the Commissioner thinks fit.

(6) The Commissioner must notify the appropriate authority of any determination that the Commissioner makes under this regulation and of the Commissioner's reasons for making the determination.

(7) The Commissioner must also notify the following of any determination that the Commissioner makes under this regulation and of the Commissioner's reasons for making the determination—

- (a) the complainant;
- (b) every person entitled to be kept properly informed in relation to the complaint under regulation 78;
- (c) the person complained against (if any).

(8) The duty imposed by paragraph (7) on the Commissioner has effect subject to regulation 67.

### **Notification of determination of form of investigation etc: exceptions**

67.—(1) Subject to paragraph (3), the duties imposed on the Commissioner by regulations 32(14), 63(11) and 66(7) do not apply where in the opinion of the Commissioner the non-disclosure of information is necessary for a purpose mentioned in paragraph (2).

(2) The purposes are—

- (a) preventing the premature or inappropriate disclosure of information that is relevant to, or may be used in, any actual or prospective disciplinary or criminal proceedings;
- (b) preventing the disclosure of information in any circumstances in which its non-disclosure—
  - (i) is in the interests of national security;
  - (ii) is for the purposes of the prevention or detection of crime, or the apprehension or prosecution of offenders;
  - (iii) is required on proportionality grounds; or
  - (iv) is otherwise necessary in the public interest.

(3) The Commissioner may only conclude that the non-disclosure of information is necessary under paragraph (1) if satisfied that—

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

(4) For the purposes of paragraph (2)(b)(iii), the non-disclosure of information is required on proportionality grounds if its disclosure would cause, directly or indirectly, an adverse effect which would be disproportionate to the benefits arising from its disclosure.

(5) The Commissioner must consider whether the non-disclosure of information is justified under paragraph (1) in circumstances where—

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

### **Recommendations by the Commissioner, the Defence Council or the Boards**

68.—(1) A recommendation under this regulation (for the purposes of regulations 18, 57, 58 and 64) is a recommendation of a kind described in paragraph (3) which is made with a view to remedying the dissatisfaction expressed by the complainant concerned.

(2) A recommendation under this regulation may only be made—

- (a) where the recommendation is made by virtue of regulation 58(8), to the Provost Marshal to whose conduct the complaint relates;
- (b) in all other cases, to the appropriate authority.

(3) The kinds of recommendations described for the purposes of paragraph (1) are—

- (a) a recommendation that an apology be made to the complainant concerned;
- (b) a recommendation that any property seized from the complainant concerned be returned;
- (c) any other recommendation, other than a recommendation that compensation be paid, which the Commissioner, the Defence Council or a Board (as the case may be) considers appropriate to remedy the dissatisfaction expressed by the complainant concerned.

- (4) The reference in paragraph (1) to the complainant concerned—
- (a) in relation to a recommendation made by virtue of regulation 18(5)(b) or (6)(c), is a reference to the complainant who applied under regulation 18(2) for the review;
  - (b) in relation to a recommendation made by virtue of regulation 57(13) or 58(8), is a reference to the complainant whose complaint, having been investigated, resulted in the submission or completion of the report under regulation 56;
  - (c) in relation to a recommendation made by virtue of regulation 64(9)(d) or (12)(d), is a reference to the complainant who applied under regulation 64(1) for the review.
- (5) The body or person to whom the recommendation is made must provide to the body or person making the recommendation a written response stating—
- (a) whether the body or person to whom the recommendation is made accepts the recommendation;
  - (b) if the body or person does, the steps that body or person is proposing to take to give effect to the recommendation;
  - (c) if the body or person does not, the reason why it is not accepted.
- (6) Subject to paragraph (7), the body or person to whom the recommendation is made must provide the response before the end of the period of 28 days starting with the day after the day on which the recommendation was made.
- (7) The body or person making the recommendation may extend the period mentioned in paragraph (6) and if that period is so extended, the response must be provided before the end of the extended period.
- (8) The body or person making the recommendation must send a copy of the recommendation and the response to it to—
- (a) the complainant concerned;
  - (b) any interested person; and
  - (c) except in a case where it appears to the body or person making the recommendation that to do so might prejudice any investigation (including an investigation of a service offence), the person complained against (if any).

### **Recommendations by the Commissioner**

- 69.**—(1) This regulation applies where the Commissioner has received a report (or otherwise completed one in relation to an investigation carried out under regulation 36 by the Commissioner personally) under—
- (a) regulation 56(3);
  - (b) regulation 56(5); or
  - (c) regulation 60(2) or (3) (report on completion of investigation of DSI matter that is not also conduct matter).
- (2) This regulation also applies where the Commissioner has made a determination on a review under—
- (a) regulation 18; or
  - (b) regulation 64.
- (3) The Commissioner may make a recommendation in relation to a matter dealt with in the report or review.
- (4) Where this regulation applies—

(a) by virtue of paragraph (1)(a) or (b) and the report is a report of an investigation of a complaint; or

(b) by virtue of paragraph (2),

a recommendation made under paragraph (3) may not be a recommendation of a kind described in regulation 68(3).

(5) A recommendation under this regulation may be made to any person if it is made—

(a) following the receipt of a report relating to—

(i) a DSI matter;

(ii) a conduct matter of a type specified in paragraph (6); or

(iii) a complaint of a type specified in paragraph (7); or

(b) following a determination on a review relating to a complaint of a type specified in paragraph (7).

(6) The types of conduct matter specified for the purposes of paragraph (5)(a)(ii) are any matter—

(a) falling within regulation 24(1)(a);

(b) relating to—

(i) a serious assault, as determined in guidance issued by the Commissioner;

(ii) a serious sexual offence, as determined in guidance issued by the Commissioner;

(iii) serious corruption, including abuse of position for a sexual purpose or for the purpose of pursuing an improper emotional relationship, as determined in guidance issued by the Commissioner;

(iv) a service offence or behaviour which is liable to lead to the initiation of administrative action procedures and which in either case was aggravated by discriminatory behaviour on the grounds of a person's race, sex, religion or other status determined in guidance by the Commissioner;

(v) a relevant service offence;

(vi) conduct which took place in the same incident as one in which conduct falling within paragraphs (i) to (v) took place;

(c) that the Commissioner determines must be investigated in accordance with regulation 26(2);

(d) in respect of which the Commissioner gives a notification to the appropriate authority under regulation 24(1)(b); or

(e) that the Commissioner is treating as having been referred to the Commissioner under regulation 25(1).

(7) The types of complaint specified for the purposes of paragraph (5)(a)(iii) and (b) are any complaint—

(a) falling within regulation 13(1)(a) (complaints alleging that conduct or other matter has resulted in death or serious injury);

(b) alleging conduct which constitutes—

(i) a serious assault, as determined in guidance issued by the Commissioner;

(ii) a serious sexual offence, as determined in guidance issued by the Commissioner;

(iii) serious corruption, including abuse of position for a sexual purpose or for the purpose of pursuing an improper emotional relationship, as determined in guidance issued by the Commissioner;

- (iv) a service offence or behaviour which is liable to lead to the initiation of administrative action procedures and which in either case was aggravated by discriminatory behaviour on the grounds of a person's race, sex, religion or other status determined in guidance by the Commissioner;
  - (v) a relevant service offence;
  - (c) which arises from the same incident as one in which any conduct falling within subparagraphs (a) or (b) took place;
  - (d) that the Commissioner determines must be investigated in accordance with regulation 16;
  - (e) in respect of which the Commissioner gives a notification to the appropriate authority under regulation 13(1)(e); or
  - (f) that the Commissioner is treating as having been referred to the Commissioner under regulation 14(1).
- (8) In any other case, a recommendation under this regulation may be made only to—
- (a) the Defence Council;
  - (b) a Board; or
  - (c) a member of a service police force.
- (9) Where the Commissioner makes a recommendation under this regulation, the Commissioner must also—
- (a) publish the recommendation, and
  - (b) send a copy of it—
    - (i) in a case where the recommendation is made to the Defence Council in relation to the tri-service serious crime unit, to the Provost Marshal for serious crime;
    - (ii) in a case where the recommendation is made to a Board, to the Provost Marshal of that force;
    - (iii) in a case where the recommendation is made to a Provost Marshal, to the appropriate authority for that Provost Marshal;
    - (iv) in any other case, to any person to whom the Commissioner thinks a copy should be sent.
- (10) Nothing in this regulation affects the power of the Commissioner to make recommendations or give advice under regulation 3(1)(e) (whether arising under this Part or otherwise).

### **Response to recommendation**

**70.**—(1) A body or person to whom a recommendation under regulation 69 is made must provide to the Commissioner a response in writing stating—

- (a) what action the body or person has taken or proposes to take in response to the recommendation; or
- (b) why the body or person has not taken, or does not propose to take, any action in response.

(2) The body or person must provide the response to the Commissioner before the end of the period of 56 days beginning with the day on which the recommendation was made, unless paragraph (3) applies.

(3) The Commissioner may extend the period of 56 days following an application received before the end of the period; and if the Commissioner grants an extension, the body or person must provide the response before the end of the extended period.



(4) But if proceedings for judicial review of the Commissioner’s decision to make a recommendation are started during the period allowed by paragraph (2) or (3), that period is extended by however many days the proceedings are in progress.

(5) On receiving a response, the Commissioner must, within the period of 21 days beginning with the day on which the Commissioner received it—

- (a) publish the response; and
- (b) send a copy of it to any person who was sent a copy of the recommendation under regulation 69(9)(b),

unless the body or person giving the response has made representations under paragraph (6).

(6) The body or person giving the response may, at the time of providing it to the Commissioner, make representations to the Commissioner asserting that the requirements of publication and disclosure under paragraph (5) should not apply to the response, or to particular parts of it.

(7) On receiving such representations, the Commissioner may decide—

- (a) that the response should not be published, or that only parts of it should be published;
- (b) that the response should not be disclosed, or that only parts of the response should be disclosed.

(8) Where, following a decision on representations, the Commissioner decides to publish or disclose a response (in whole or in part), the Commissioner must do so only after the body or person giving the response has been informed of the Commissioner’s decision, and—

- (a) in a case where the Commissioner has decided to accept all of the representations, the Commissioner must do so within the period of 21 days beginning with the day on which the Commissioner received the response;
- (b) in a case where the Commissioner has decided to reject any of the representations, the Commissioner must do so—
  - (i) within the period of 21 days beginning with the day on which the body or person was informed of the Commissioner’s decision on the representations; but
  - (ii) not before the end of the period of 7 days beginning with that day.

(9) But if proceedings for judicial review of the Commissioner’s decision to reject a representation are started during the period of 7 days referred to in paragraph (8)(b)(ii)—

- (a) the Commissioner must not publish or disclose the response while the proceedings are in progress;
- (b) if the court upholds the Commissioner’s decision to reject a representation, the Commissioner must publish and disclose the response (in whole or in part, as appropriate) before the end of the period of 7 days beginning with the day on which the proceedings are no longer in progress.

(10) Where the Defence Council, a Board or a Provost Marshal makes a response under this regulation, that body or person must, at the time the Commissioner publishes the response, publish—

- (a) the recommendation under regulation 69; and
- (b) the response,

to the same extent as the recommendation was published by the Commissioner.

(11) For the purposes of this regulation—

- (a) “disclosing” a response means sending a copy of it as mentioned in paragraph (5)(b);
- (b) the period during which judicial review proceedings are in progress includes any day on which an appeal is in progress or may be brought.

(12) This regulation does not apply, or ceases to apply, in relation to a recommendation made by virtue of regulation 69(1) if the Commissioner determines under regulation 63 that the complaint, recordable conduct matter or DSI matter that the Commissioner received a report on (or otherwise completed one on in relation to an investigation carried out by the Commissioner personally) is to be re-investigated.

### **Delegation of exercise or performance of powers and duties by the Defence Council or a Board**

71.—(1) Subject to paragraph (2), the Defence Council or a Board may delegate the exercise or performance of all or any of the powers and duties conferred or imposed on it by this Part to any person.

- (2) The Defence Council or a Board may not delegate any power or duty under paragraph (1) to—
- (a) a member of a service police force; or
  - (b) any person if to do so could reasonably give rise to a concern as to whether the person could act impartially.

### **Manner and time limit of notifications under this Part**

72.—(1) Any notification to be given under this Part must—

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

(2) No time limit mentioned in this Part or determined by the Commissioner applies in any case where exceptional circumstances prevent that time limit being complied with.

### **General duties of the Defence Council, the Boards, Provost Marshals and Inspectors**

73.—(1) The following bodies or persons must ensure that it or they are kept informed about all matters falling within paragraph (2)—

- (a) the Defence Council in relation to the tri-service serious crime unit;
- (b) each Board in relation to their force;
- (c) each of the Provost Marshals in relation to their force or the tri-service serious crime unit; and
- (d) every inspector of constabulary carrying out functions in relation to a service police force or the tri-service serious crime unit.

(2) Those matters are—

- (a) matters with respect to which any provision of this Part has effect;
- (b) anything which is done under or for the purposes of any such provision; and
- (c) any obligations to act or refrain from acting that have arisen by or under this Part but have not yet been complied with, or have been contravened.

(3) Where it appears to the Defence Council or a Board that—

- (a) an obligation to act or refrain from acting has arisen by or under this Part;
- (b) that obligation is an obligation on a Provost Marshal for whom it is the appropriate authority; and
- (c) that Provost Marshal has not yet complied with that obligation, or has contravened it,

it may direct that Provost Marshal to take such steps as it thinks appropriate.

(4) A Provost Marshal must comply with any direction given under paragraph (3).

(5) Where an appropriate authority requires a Provost Marshal to provide a member of a service police force under their direction for appointment under regulation 33 or 34 as an investigator in relation to a complaint, conduct or DSI matter, it is the duty of the Provost Marshal to whom the requirement is directed to comply with it.

(6) The following bodies or persons must provide the Commissioner and the Commissioner's staff with all such assistance as the Commissioner may reasonably require for the purposes of, or in connection with, the carrying out of any investigation by the Commissioner under this Part or any review under regulation 64—

- (a) the Defence Council;
- (b) the Boards; and
- (c) the Provost Marshals.

(7) The following bodies or persons must ensure that a person appointed under regulation 33 or 34 to carry out an investigation is given all such assistance and co-operation in the carrying out of that investigation as that person may reasonably require—

- (a) the Defence Council;
- (b) the Boards; and
- (c) the Provost Marshals.

(8) The duties imposed by paragraphs (6) and (7) on the Defence Council in relation to the tri-service serious crime unit, a Board in relation to its service police force and a Provost Marshal of a service police force or the tri-service serious crime unit, have effect—

- (a) irrespective of whether the investigation or review (as the case may be) relates to the conduct of a person who is or has been a member of that service police force or serves or served in the tri-service serious crime unit;
- (b) in the case of an investigation, irrespective of whether the person appointed to investigate is under the direction of the Provost Marshal on whom the duties are imposed; and
- (c) in the case of a review applied for under regulation 64(1) in respect of an investigation, irrespective of whether the person appointed to carry out the investigation was under the direction of the Provost Marshal on whom the duties are imposed;

but a Provost Marshal of a third service police force may be required to give assistance and co-operation under paragraph (7) to a person only with the approval of the Provost Marshal of the force of which that person is a member or, where that person is serving with the tri-service serious crime unit, the Provost Marshal of that unit.

(9) In paragraph (8) “third service police force” includes the tri-service serious crime unit and, in relation to an investigation, means a service police force other than—

- (a) the service police force which the person carrying out the investigation is a member of or serves with; or
- (b) the service police force which the person whose conduct is under investigation was a member of or served with at the time of the conduct.

#### **Provision of information to the Commissioner**

**74.**—(1) The Defence Council, a Board or a Provost Marshal must, on receipt of a notification given by the Commissioner—

- (a) provide the Commissioner with all such information and documents specified or described in that notification; and
- (b) produce or deliver up to the Commissioner all such evidence and other things so specified or described,

as appear to the Commissioner to be required by the Commissioner for the purposes of the carrying out of any of the Commissioner's functions.

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

- (a) the notification imposing the requirement; or
  - (b) in any subsequent notification given by the Commissioner to that body or person for the purposes of this paragraph.
- (3) Nothing in this regulation requires the Defence Council, a Board or a Provost Marshal—
- (a) to provide the Commissioner with any information or document, or to produce or deliver up any other thing, before the earliest time at which it is practicable to do so; or
  - (b) to provide, produce or deliver up anything at all in a case in which it never becomes practicable to do so.

(4) A requirement imposed by any notification under this regulation may authorise or require information or documents to which it relates to be provided to the Commissioner electronically.

### **Inspections of service police premises on behalf of the Commissioner**

75.—(1) Where—

- (a) the Commissioner requires—
  - (i) the Defence Council;
  - (ii) a Board; or
  - (iii) a Provost Marshal,

to allow a person nominated for the purpose by the Commissioner to have access to any premises under their control that are occupied for the purposes of a service police force or the tri-service serious crime unit and to documents and other things on those premises, and

- (b) the requirement is imposed for any of the purposes mentioned in paragraph (2),

the Defence Council, the Board or the Provost Marshal so required by the Commissioner in subparagraph (a) must secure that the required access is allowed to the nominated person.

(2) Those purposes are—

- (a) the purposes of any examination by the Commissioner of the efficiency and effectiveness of the arrangements made by the force or tri-service serious crime unit in question for handling complaints or dealing with recordable conduct matters or DSI matters;
- (b) the purposes of any investigation by the Commissioner under this Part or of any investigation carried out under the Commissioner's direction;
- (c) the purposes of any review by the Commissioner under regulation 64.

(3) A requirement imposed by the Commissioner under this regulation for the purposes mentioned in paragraph (2)(a) must be notified to the Defence Council, the Board or the Provost Marshal at least 48 hours before the time at which access is required.

(4) Where—

- (a) a requirement imposed under this regulation for the purposes mentioned in paragraph (2)
  - (a) requires access to any premises, document or thing to be allowed to any person; but
  - (b) there are reasonable grounds for not allowing that person to have the required access at the time at which access is sought,

the obligation to secure that the required access is allowed has effect as an obligation to secure that the access is allowed to that person at the earliest practicable time after there ceases to be any such grounds as that body or person may specify.

- (5) The provisions of this regulation are in addition to, and without prejudice to—
  - (a) the rights of entry, search and seizure that are or may be conferred on—
    - (i) a person designated for the purposes of regulation 36; or
    - (ii) any person who otherwise acts on behalf of the Commissioner;  
in their capacity as a member of a service police force or as a person with the powers and privileges of a member of a service police force; or
  - (b) the obligations of the Defence Council, the Boards and the Commissioner under regulations 73 and 74.

### **Records to be kept by the Defence Council, Boards and Provost Marshals**

**76.** The Defence Council, the Boards, the Provost Marshals for each service police force and the Provost Marshal for serious crime, must keep records, in such form as the Commissioner determines, of—

- (a) every complaint that is recorded by the appropriate authority under regulation 12(7) or 14(4);
- (b) every complaint that is made to the appropriate authority which is—
  - (i) not recorded under regulation 12(7) or 14(4); and
  - (ii) of a description determined by the Commissioner;
- (c) every matter purporting to be a complaint that is made to the Defence Council, a Board or a Provost Marshal which is of a description determined by the Commissioner;
- (d) every conduct matter recorded by the appropriate authority under regulations 21(4), (5) or (7), 22(4), (6) or (7) or 25(4);
- (e) every DSI matter recorded by the appropriate authority under regulations 27 or 30(4);
- (f) every exercise of a power or performance of a duty under this Part by the Defence Council, a Board or a Provost Marshal.

### **Duty to keep the complainant informed**

**77.—**(1) In any case in which there is an investigation of a complaint in accordance with this Part by the Commissioner or under the Commissioner's direction, the Commissioner must provide the complainant with all such information as will keep the complainant properly informed, while the investigation is being carried out and subsequently, of all the matters mentioned in paragraph (5).

(2) In any case in which there is an investigation of a complaint, in accordance with this Part by the appropriate authority on its own behalf, the appropriate authority must provide the complainant with all such information as will keep the complainant properly informed, while the investigation is being carried out and subsequently, of all the matters mentioned in paragraph (5).

(3) Where paragraph (2) applies, the Commissioner must give the appropriate authority all such directions as the Commissioner considers appropriate for securing that that authority complies with

its duty under that paragraph, and the appropriate authority must comply with any direction given to it under this paragraph.

- (4) In any case in which a complaint is being handled—
- (a) in accordance with regulation 17(3) otherwise than by the appropriate authority making arrangements for the complaint to be investigated by the authority on its own behalf; or
  - (b) otherwise than in accordance with regulation 12(9),

the appropriate authority must provide the complainant with all such information as will keep the complainant properly informed, while the complaint is being handled and subsequently, of all the matters mentioned in paragraph (5).

- (5) The matters of which the complainant must be kept properly informed are—
- (a) the progress of the handling of the complaint;
  - (b) the outcome of the handling of the complaint;
  - (c) in relation to any right to apply for a review conferred on the complainant by regulation 18 or 64 (as the case may be)—
    - (i) the identity of the relevant review body;
    - (ii) where the appropriate authority has determined that the Commissioner is not the relevant review body, the fact that there is no right to apply to the Commissioner for a review;
    - (iii) the time limit for applying for a review; and
    - (iv) the effect of regulation 65(5);
  - (d) the progress of any disciplinary or criminal proceedings brought in relation to, or arising from, any matter which was the subject of the complaint, recordable conduct matter or DSI matter;
  - (e) the outcome of any such proceedings;
  - (f) where an appeal is brought against the outcome of any such proceedings, the fact and outcome of the appeal.

(6) The generality of paragraph (5)(a) and (b) is not affected by any requirement to notify the complainant that is imposed by any other provision of this Part.

(7) The duties imposed by this regulation on the Commissioner and the appropriate authority in relation to any complaint must be performed in such manner as provided for by regulation 79, and have effect subject to the exceptions set out in regulation 80 (exceptions to duties to keep the complainant and interested person informed).

(8) In any case in which there is an investigation of a complaint, the Commissioner or the appropriate authority may comply with their duty under paragraph (1) or (2) (as the case may be) so far as relating to the findings of a report of the investigation submitted (or completed) under regulation 56, by sending the complainant a copy of the report.

(9) Paragraph (8) applies notwithstanding any obligation of secrecy imposed by any rule of law or otherwise but is subject to regulations 80 and 81.

(10) A person appointed to carry out an investigation under this Part, or who is otherwise involved in the handling of a complaint under this Part, must provide the Commissioner or, as the case may be, the appropriate authority with all such information as the Commissioner or that authority may reasonably require for the purpose of performing their duty under this regulation.

### **Duty to provide information for other persons**

**78.**—(1) A person has an interest in being kept properly informed about the handling of a complaint, recordable conduct matter or DSI matter if—

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

(2) A person falls within this paragraph if (in the case of a complaint that relates to conduct of a member of a service police force or a recordable conduct matter) that person—

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

(3) A person falls within this paragraph if (in the case of a DSI matter) that person—

- (a) is a relative of the person who has died;
- (b) is a relative of the person who has suffered serious injury and that person is incapable of making a complaint;
- (c) is the person who has suffered serious injury.

(4) A person who does not fall within paragraph (2) or (3) has an interest in being kept properly informed about the handling of a complaint, recordable conduct matter or DSI matter if—

- (a) the Commissioner or an appropriate authority considers that that person has an interest in the handling of the complaint, recordable conduct matter or DSI matter which is sufficient to make it appropriate for information to be provided to that person in accordance with this regulation; and
- (b) that person has indicated consent to the provision of information to that person in accordance with this regulation.

(5) In relation to a complaint, this regulation confers no rights on the complainant.

(6) In any case in which there is an investigation of the complaint, recordable conduct matter or DSI matter in accordance with this Part—

- (a) by the Commissioner, or
- (b) under the Commissioner's direction,

the Commissioner must provide the interested person with all such information as will keep the interested person properly informed, while the investigation is being carried out and subsequently, of all the matters mentioned in paragraph (10).

(7) In any case in which there is an investigation of the complaint, recordable conduct matter or DSI matter in accordance with this Part by the appropriate authority on its own behalf, the appropriate authority must provide the interested person with all such information as will keep that person properly informed, while the investigation is being carried out and subsequently, of all the matters mentioned in paragraph (10).

(8) Where paragraph (7) applies, the Commissioner must give the appropriate authority all such directions as the Commissioner considers appropriate for securing that that authority complies with its duty under that paragraph; and the appropriate authority must comply with any direction given to it under this paragraph.

(9) In any case in which—

- (a) the complaint is being handled in accordance with regulation 17(3) otherwise than by the appropriate authority making arrangements for the complaint to be investigated by the authority on its own behalf, or
- (b) the recordable conduct matter or DSI matter is being handled in a manner determined by the appropriate authority in accordance with regulation 21(8), 22(8), 26(4) or 31(4) otherwise than by the appropriate authority making arrangements for the matter to be investigated by the authority on its own behalf,

the appropriate authority must provide the interested person with all such information as will keep that person properly informed, while the complaint, recordable conduct matter or DSI matter is being handled and subsequently, of all the matters mentioned in paragraph (10).

- (10) The matters of which the interested person must be kept properly informed are—
- (a) the progress of the handling of the complaint, recordable conduct matter or DSI matter;
  - (b) the outcome of the handling of the complaint, recordable conduct matter or DSI matter;
  - (c) in the case of a complaint, in relation to any right to apply for a review conferred on the complainant by regulation 18 or 64—
    - (i) the identity of the relevant review body;
    - (ii) where the appropriate authority has determined that the Commissioner is not the relevant review body, the fact that there is no right to apply to the Commissioner for a review;
    - (iii) the time limit for applying for a review; and
    - (iv) the effect of regulation 65(5);
  - (d) the progress of any disciplinary or criminal proceedings brought in relation to, or arising from, any matter which was the subject of the complaint, recordable conduct matter or DSI matter;
  - (e) the outcome of any such proceedings;
  - (f) where an appeal is brought against the outcome of any such proceedings, the fact and outcome of the appeal.

(11) The generality of paragraph (10)(a) and (b) is not affected by any requirement to notify an interested person that is imposed by any other provision of this Part.

(12) The duties imposed by this regulation on the Commissioner and the appropriate authority in relation to any complaint, recordable conduct matter or DSI matter—

- (a) must be performed in such manner as provided for by regulation 79; and
- (b) have effect subject to the exceptions set out in regulation 80.

(13) Paragraph (10) of regulation 77 applies for the purpose of this regulation as it applies for the purpose of that regulation.

(14) In any case in which there is an investigation of a complaint, recordable conduct matter or DSI matter, the Commissioner or the appropriate authority may comply with their duty under paragraph (6) or (7) (as the case may be) so far as relating to the findings of a report of the investigation submitted (or completed) under regulations 56 or 60, by sending an interested person a copy of the report.

(15) Paragraph (14) applies notwithstanding any obligation of secrecy imposed by any rule of law or otherwise but is subject to regulation 80 and 81.

- (16) In this regulation “relative” means any spouse, partner, parent or adult child.



### **Manner in which duties to keep the complainant and interested person informed are to be performed**

**79.**—(1) For the purposes of regulations 77(7) and 78(12), the provisions of this regulation specify the manner in which the duties imposed on the Commissioner and the appropriate authority by those regulations are to be performed.

(2) The Commissioner or appropriate authority (as the case may be) must inform the complainant or interested person of—

- (a) the progress of the handling of the complaint, recordable conduct matter or DSI matter and any of the matters mentioned in regulation 77(5)(d) or 78(10)(d) promptly and in any event—
  - (i) if there has been no previous notification, within four weeks of the start of the handling of the complaint, proceedings or procedures; and
  - (ii) in any other case, within four weeks of the previous notification;
- (b) the following matters—
  - (i) the outcome of the handling of the complaint, recordable conduct matter or DSI matter;
  - (ii) the matter mentioned in regulation 77(5)(e) or 78(10)(e); and
  - (iii) the matters mentioned in regulation 77(5)(f) or 78(10)(f),

promptly and in any event within five working days of the outcome (and, where applicable, the bringing of the appeal).

(3) The information required by paragraph (2) must be given in writing, unless, in the case of a complaint, the complaint—

- (a) was made otherwise than in writing; and
- (b) is being handled otherwise than in accordance with this Part.

(4) The appropriate authority must inform the complainant in writing of—

- (a) any right to apply for a review conferred on the complainant by regulation 18 or 64; and
- (b) the matters mentioned in regulation 77(5)(c) or 78(10)(c),

promptly and in any event within five working days of the outcome of the handling of the complaint.

(5) In performing the duties imposed by regulation 77(1), (2) and (4), and 78(6), (7) and (9), the Commissioner or appropriate authority (as the case may be) must determine whether it is appropriate to offer, or grant a request for, a meeting with a complainant or interested person.

(6) As soon as practicable after any such meeting, the Commissioner or appropriate authority (as the case may be) must send the complainant or interested person a written record of the meeting and an account of how any concerns of that person will be addressed.

### **Exceptions to duties to keep the complainant and interested person informed**

**80.**—(1) The exceptions to the duties imposed by regulations 77(7) and 78(12) are where in the opinion of the Commissioner or appropriate authority (as the case may be) the non-disclosure of information is necessary for a purpose mentioned in paragraph (2).

(2) The purposes are—

- (a) preventing the premature or inappropriate disclosure of information that is relevant to, or may be used in, any actual or prospective disciplinary or criminal proceedings;

- (b) preventing the disclosure of information in any circumstances in which its non-disclosure—
  - (i) is in the interests of national security;
  - (ii) is for the purposes of the prevention or detection of crime, or the apprehension or prosecution of offenders;
  - (iii) is required on proportionality grounds; or
  - (iv) is otherwise necessary in the public interest.
- (3) The Commissioner or appropriate authority (as the case may be) may only conclude that the non-disclosure of information is necessary under paragraph (1) if satisfied that—
  - (a) there is a real risk of the disclosure of that information causing an adverse effect, and
  - (b) that adverse effect would be significant.
- (4) For the purposes of paragraph (2)(b)(iii), the non-disclosure of information is required on proportionality grounds if its disclosure would cause, directly or indirectly, an adverse effect which would be disproportionate to the benefit arising from its disclosure.
- (5) The Commissioner or appropriate authority (as the case may be) must consider whether the non-disclosure of information is justified under paragraph (2) in circumstances where—
  - (a) that information is relevant to, or may be used in, any actual or prospective administrative action procedures;
  - (b) the disclosure of that information may lead to the contamination of the evidence of witnesses during such procedures;
  - (c) the disclosure of that information might prejudice the welfare or safety of any third party;
  - (d) that information constitutes criminal intelligence.

### **Restrictions on disclosure of sensitive information**

- 81.**—(1) Where the Commissioner receives information within paragraph (3), the Commissioner must not disclose (whether under regulations 7, 77, 78 or otherwise) the information, or the fact that it has been received, unless the relevant authority consents to the disclosure.
- (2) Where a person appointed under regulation 34 to investigate a complaint or matter (a “regulation 34 investigator”) receives information within paragraph (3), the regulation 34 investigator must not disclose the information, or the fact that it has been received, to any person other than the Commissioner unless the relevant authority consents to the disclosure.
- (3) The information is—
  - (a) intelligence service information;
  - (b) protected information relating to a relevant warrant;
  - (c) information obtained from a government department which, at the time it is provided to the Commissioner or the regulation 34 investigator, is identified by the department as information the disclosure of which may, in the opinion of the relevant authority—
    - (i) cause damage to national security, international relations or the economic interests of the United Kingdom or any part of the United Kingdom; or
    - (ii) jeopardise the safety of any person.
- (4) Where the Commissioner or a regulation 34 investigator discloses to another person information within paragraph (3), or the fact that the Commissioner or the regulation 34 investigator has received it, the other person must not disclose that information or that fact unless the relevant authority consents to the disclosure.
- (5) In this regulation—

“government department” means a department of His Majesty’s Government but does not include—

- (a) the Security Service;
- (b) the Secret Intelligence Service; or
- (c) the Government Communications Headquarters (“GCHQ”);

“intelligence service information” means information that was obtained (directly or indirectly) from or that relates to—

- (a) the Security Service;
- (b) the Secret Intelligence Service;
- (c) GCHQ; or
- (d) any part of His Majesty’s forces, or of the Ministry of Defence, which engages in intelligence activities;

“Minister of the Crown” includes the Treasury;

“regulation 34 investigator” has the meaning given by paragraph (2);

“protected information”, in relation to a relevant warrant, means information relating to any of the matters mentioned in section 57(4) of the Investigatory Powers Act 2016(15) in relation to the warrant;

“relevant authority” means—

- (a) in the case of intelligence service information obtained (directly or indirectly) from or relating to the Security Service, the Director-General of the Security Service;
- (b) in the case of intelligence service information obtained (directly or indirectly) from or relating to the Secret Intelligence Service, the Chief of the Secret Intelligence Service;
- (c) in the case of intelligence service information obtained (directly or indirectly) from or relating to GCHQ, the Director of GCHQ;
- (d) in the case of intelligence service information obtained (directly or indirectly) from or relating to His Majesty’s forces or the Ministry of Defence, the Secretary of State;
- (e) in the case of protected information relating to a relevant warrant, the person to whom the relevant warrant is or was addressed;
- (f) in the case of information within paragraph (3)(c)—
  - (i) the Secretary of State; or
  - (ii) the Minister of the Crown in charge of the government department from which the information was obtained (if that Minister is not a Secretary of State);

“relevant warrant” means—

- (a) a warrant under Chapter 1 of Part 2 of the Investigatory Powers Act 2016; or
- (b) a warrant under Chapter 1 of Part 6 of that Act.

### **Provision of sensitive information to the Commissioner and certain investigators**

**82.**—(1) A person who provides information that is intelligence service information or protected information relating to a relevant warrant to the Commissioner or a regulation 34 investigator (whether under a provision of this Part or otherwise) must—

- (a) make the Commissioner or the regulation 34 investigator aware that the information is intelligence service information or (as the case may be) protected information relating to a relevant warrant; and
- (b) provide the Commissioner or the regulation 34 investigator with such additional information as will enable the Commissioner or the regulation 34 investigator to identify the relevant authority in relation to the information.

(2) In this regulation, “intelligence service information”, “protected information relating to a relevant warrant”, “regulation 34 investigator” and “relevant authority” have the same meaning as in regulation 81.

### **Register to be kept by the Commissioner**

**83.**—(1) The Commissioner must maintain a register of all information provided to the Commissioner by the Defence Council, a Board or a Provost Marshal under this Part.

(2) Subject to paragraph (3), the Commissioner may publish or otherwise disclose to any person any information held on the register where, in the opinion of the Commissioner, that is necessary for or conducive to the purpose of—

- (a) learning lessons from the handling of complaints, conduct matters or DSI matters;
- (b) demonstrating the thoroughness and effectiveness of the handling of complaints or such matters;
- (c) raising awareness of the complaints system; or
- (d) improving the complaints system.

(3) Information may not be published or disclosed in circumstances where, in the opinion of the Commissioner, the non-disclosure of the information is necessary for a purpose mentioned in regulation 80(2).

### **Delegation of exercise or performance of powers and duties by Provost Marshals**

**84.**—(1) Subject to the following provisions of this regulation, a Provost Marshal may delegate the exercise or performance of all or any of the powers and duties conferred or imposed on that Provost Marshal by or under this Part to—

- (a) in the case of a complaint or conduct matter concerning the conduct of a senior officer, another senior officer;
- (b) in any other case a member of a service police force of at least the rank of—
  - (i) Lieutenant in relation to the Royal Navy Police;
  - (ii) Captain in relation to the Royal Military Police;
  - (iii) Flight Lieutenant in relation to the Royal Air Force Police.

(2) Subject to paragraph (3), where a complaint is being handled by a Provost Marshal—

- (a) in accordance with regulation 17(3) otherwise than by the appropriate authority making arrangements for the complaint to be investigated by that authority on its own behalf; or
- (b) otherwise than in accordance with this Part,

that person may delegate the exercise or performance of all or any of the powers and duties conferred or imposed on them by or under this Part to any member of a service police force.

(3) A Provost Marshal must not delegate the exercise or performance of any power or duty under this regulation to a person if to do so could reasonably give rise to a concern as to whether the person could act impartially.

## **Power of the Commissioner to issue guidance**

**85.**—(1) The Commissioner may issue guidance to—

- (a) the Defence Council;
- (b) the Boards;
- (c) the Provost Marshals; and
- (d) other members of the service police forces,

concerning the exercise or performance, by the persons to whom the guidance is issued, of any of the powers or duties specified in paragraph (2).

(2) Those powers and duties are—

- (a) those that are conferred or imposed by this Part; and
- (b) those that are otherwise conferred or imposed but relate to—
  - (i) the handling of complaints;
  - (ii) the means by which recordable conduct matters or DSI matters are dealt with; or
  - (iii) the detection or deterrence of misconduct by members of the service police forces.

(3) Before issuing any guidance under this section, the Commissioner must consult with—

- (a) such persons as appear to the Commissioner to represent the views of the Defence Council and the Boards;
- (b) the Provost Marshals; and
- (c) such other persons as the Commissioner thinks fit.

(4) The approval of the Secretary of State is required for the issue by the Commissioner of any guidance under this regulation.

(5) Without prejudice to the generality of the preceding provisions of this regulation, the guidance that may be issued under this regulation includes—

- (a) guidance about the handling of complaints which have not yet been recorded and about dealing with recordable conduct matters or DSI matters that have not been recorded;
- (b) guidance about the procedure to be followed by the appropriate authority when recording a complaint or any recordable conduct matter or DSI matter;
- (c) guidance about how to protect the scene of an incident or alleged incident which—
  - (i) is or may become the subject-matter of a complaint; or
  - (ii) is or may involve a recordable conduct matter or DSI matter;
- (d) guidance about the circumstances in which it is appropriate (where it is lawful to do so)—
  - (i) to disclose to any person, or to publish, any information about an investigation of a complaint, conduct matter or DSI matter; or
  - (ii) to provide any person with, or to publish, any report or other document relating to such an investigation.

(6) Nothing in this regulation authorises the issuing of any guidance about a particular case.

(7) Every person to whom any guidance under this regulation is issued must have regard to that guidance in exercising or performing the powers and duties to which the guidance relates.

(8) A failure by a person to whom guidance under this regulation is issued to have regard to the guidance, is admissible in evidence in any administrative action procedures.

## Consequential amendments

86. In consequence of provisions of this Part, Schedule 2 has effect.

## PART 4

### Super-complaints

#### CHAPTER 1

##### Interpretation

### Interpretation of this Part

87. In this Part—

“super-complaint” means a complaint made to the Chief Inspector under regulation 88;

“trade union” has the meaning given in section 1 of the Trade Union and Labour Relations (Consolidation) Act 1992<sup>(16)</sup>.

#### CHAPTER 2

##### Power to make super-complaints

### Power to make super-complaints

88.—(1) A body designated by the Secretary of State in accordance with this Part may make a super-complaint to the Chief Inspector that a feature, or combination of features, of policing by one or more than one relevant body<sup>(17)</sup> is, or appears to be, significantly harming the interests of the public.

(2) The Secretary of State may make or revoke such a designation if the Secretary of State considers it appropriate to do so.

(3) The Secretary of State must, in deciding whether to act under paragraph (2), apply the criteria specified in regulation 89, or the criterion specified in regulation 90, as the case may be.

(4) The Secretary of State must publish, in such manner as the Secretary of State considers appropriate, the name of each body designated and the revocation of any such designation.

### Criteria for the making of designations

89. The following criteria must be applied by the Secretary of State in deciding whether to make a designation—

- (a) that the body is competent in, and has considerable experience of, representing the interests of the public;
- (b) that the body would represent the interests of the public effectively in its role as a designated body and, in particular, would work to improve policing;
- (c) that the composition of the body and the arrangements for its governance and accountability are such that it can be relied upon to act independently and with integrity in its role as a designated body;
- (d) that the body has the capability necessary to carry out its role as a designated body effectively;

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<sup>(16)</sup> 1992 c. 52.

<sup>(17)</sup> See section 340R(2) of the 2006 Act for the meaning of “relevant body”.

- (e) that the body has made arrangements for the appropriate storage and handling of data that it may obtain in its role as a designated body;
- (f) that the body can be relied upon to have regard to any guidance in relation to the making of super-complaints under regulation 88(1) which is given to designated bodies by the Chief Inspector;
- (g) that the body is not—
  - (i) a trade union; or
  - (ii) an association (other than a trade union) which represents the interests of members of a service police force;
- (h) that the body would—
  - (i) collaborate effectively with bodies which are not designated bodies but which are, or may be, aware of matters which could form the basis of a super-complaint; and
  - (ii) where appropriate, make a super-complaint on the basis of matters raised with it by such bodies.

### **Criterion for the revocation of designations**

**90.** The criterion specified for the revocation of a designation is that one or more of the following sets of circumstances apply in relation to the body—

- (a) it is failing to represent the interests of the public effectively in its role as a designated body;
- (b) it is failing to act independently and with integrity in that role;
- (c) it no longer has the capability necessary to carry out that role;
- (d) it no longer has effective arrangements for the appropriate storage and handling of data that it may obtain in its role as a designated body;
- (e) it is failing to have regard to guidance in relation to the making of super-complaints under regulation 88(1) which is given to designated bodies by the Chief Inspector;
- (f) it has become—
  - (i) a trade union; or
  - (ii) an association (other than a trade union) which represents the interests of members of a service police force;
- (g) it is—
  - (i) failing to collaborate effectively with bodies which are not designated bodies but which are, or may be, aware of matters which could form the basis of a super-complaint; or
  - (ii) failing to make super-complaints in appropriate cases on the basis of matters raised with it by such bodies.

### **Guidance about super-complaints**

**91.**—(1) The Chief Inspector may give guidance in relation to the making of super-complaints, to bodies designated by the Secretary of State in accordance with this Part.

- (2) The Chief Inspector may revise any guidance given under paragraph (1).

### **Requirements for making super-complaints**

- 92.**—(1) A super-complaint must be in writing.

- (2) A super-complaint must—
- (a) set out the feature, or combination of features, of policing to which it relates;
  - (b) explain why the designated body making the complaint, is of the opinion that the feature, or combination of features, is or appears to be significantly harming the interests of the public; and
  - (c) include the evidence relied upon by that designated body to support that opinion.
- (3) A super-complaint must give the name of an individual representing the designated body making the complaint, who may be contacted about the super-complaint.

## CHAPTER 3

### Duties in respect of super-complaints

#### **Duty to acknowledge receipt**

**93.** The Chief Inspector must acknowledge receipt of a super-complaint before the end of the period of 5 working days beginning with the day on which the super-complaint is received or, if that day is not a working day, beginning with the first working day after that day.

#### **Duty to determine eligibility for consideration**

**94.**—(1) Where a super-complaint is received by the Chief Inspector, the Chief Inspector and the Commissioner must decide whether it is eligible for consideration.

(2) Subject to paragraphs (3) and (4), a super-complaint is eligible for consideration if it complies with the requirements of regulation 92.

(3) A super-complaint that merely repeats the substance of a super-complaint that is being investigated is not eligible for consideration.

(4) A super-complaint that merely repeats the substance of a super-complaint that has already been investigated is not eligible for consideration unless there has been a material change of circumstances since the previous super-complaint was made.

(5) If the Chief Inspector and the Commissioner decide that a super-complaint is eligible for consideration, the Chief Inspector must inform the designated body making the super-complaint, in writing that—

- (a) the super-complaint will be investigated; and
- (b) that designated body will be provided with progress reports on the investigation of the super-complaint.

(6) Where the Chief Inspector and the Commissioner are unable to agree on whether a super-complaint is eligible for consideration, the decision whether the super-complaint is eligible for consideration is to be made by the Chief Inspector.

(7) If the Chief Inspector and the Commissioner decide that the super-complaint is not eligible for consideration, the Chief Inspector must inform the designated body making the complaint in writing of that decision and the reasons for it.

#### **Duty to provide progress reports**

**95.**—(1) Where the designated body making the complaint has been informed that a super-complaint will be investigated, the Chief Inspector must, before the end of each relevant period, send that designated body a written progress report.

- (2) Subject to paragraph (3), the progress report must include the following information—



- (a) an explanation of the steps the Chief Inspector and the Commissioner have taken in relation to the investigation (so far as they have not been explained in a previous written progress report sent to that designated body);
  - (b) an explanation of the steps they propose to take in relation to the investigation before the end of the next relevant period in relation to the investigation.
- (3) The Chief Inspector may exclude information from the progress report if the Chief Inspector considers that its inclusion—
- (a) would be contrary to the interests of national security; or
  - (b) might jeopardise the safety of any person.
- (4) For the purposes of this regulation, each of the following is a “relevant period”—
- (a) the period of 56 working days beginning with the day on which the Chief Inspector informs the designated body making the complaint that the super-complaint will be investigated;
  - (b) each subsequent period of 56 working days beginning with the first working day after the end of the preceding relevant period.

#### **Duty to report on outcome of investigation**

**96.**—(1) When the Chief Inspector and the Commissioner have concluded an investigation of a super-complaint, they must make a report—

- (a) describing the steps they have taken to investigate the super-complaint;
  - (b) setting out their conclusions and the reasons for them;
  - (c) describing any further action they (or one of them) propose to take; and
  - (d) making such recommendations to any other person as they consider appropriate.
- (2) The Chief Inspector must—
- (a) send the report to the designated body making the complaint; and
  - (b) publish it in such form and manner as the Chief Inspector considers appropriate.
- (3) The Chief Inspector may exclude information from the report sent to that designated body and published under paragraph (2) if the Chief Inspector considers that its inclusion—
- (a) would be contrary to the interests of national security; or
  - (b) might jeopardise the safety of any person.
- (4) Where the Chief Inspector and the Commissioner are unable to agree on the contents of a report, the Chief Inspector and the Commissioner must each include in the report their opinion on the matters on which there is disagreement.

### **CHAPTER 4**

#### **Further provision about super-complaints**

#### **Powers in relation to investigations**

**97.**—(1) The Chief Inspector and the Commissioner may request any person to provide advice on, or assistance with, the investigation of a super-complaint or the preparation of a report under regulation 96.

(2) Subject to the modification in paragraph (3), paragraphs 6A and 6B of Schedule 4A to the 1996 Act (further provision about His Majesty’s inspectors of constabulary: powers of inspectors to obtain information and access to premises) apply in relation to an investigation of a super-complaint under this Part as they apply in relation to an inspection under section 54 of that Act (appointment and functions of inspectors of constabulary).

(3) The modification mentioned in paragraph (2) is that in paragraph 6B of Schedule 4A to the 1996 Act, for sub-paragraph (1)(a) there were substituted—

“premises that are occupied (wholly or partly) for the purposes of the tri-service serious crime unit or a service police force, and”.

(4) Subject to the modification in paragraph (5), where a notice is, by virtue of paragraph (2), served under paragraph 6A of Schedule 4A to the 1996 Act, paragraphs 6C and 6D of that Schedule (further provision about His Majesty’s inspectors of constabulary: failure to comply with notices and appeals) apply in relation to the notice.

(5) The modification mentioned in paragraph (4) is that in paragraph 6D(2) of Schedule 4A to the 1996 Act, after paragraph (g) there were inserted—

“(h) the Defence Council, the Admiralty Board, the Army Board, the Royal Air Force Board, a member of the tri-service serious crime unit or a member of a service police force”.

(6) Where a notice is, by virtue of paragraph (2), served under paragraph 6B of Schedule 4A to the 1996 Act, paragraph 6C of that Schedule applies in relation to the notice.

(7) For the purpose of investigating a super-complaint under this regulation, regulation 43 (power to serve information notice) and regulation 75 (inspection of service police premises on behalf of the Commissioner) apply as they apply in relation to an investigation under Part 3, and any reference to a complaint in regulation 36 (as mentioned in regulation 43(1)) and regulation 75 is to be read as including a reference to a super-complaint.

(8) Where a notice is, by virtue of paragraph (7), served under regulation 43, regulations 44 (failure to comply with information notice) and 45 (appeals against information notices) apply in relation to the notice.

### **Information sharing etc.**

**98.**—(1) For the purpose of investigating a super-complaint, the Chief Inspector and the Commissioner may use any information held by them and share that information with each other.

(2) The use or sharing of information by the Chief Inspector and the Commissioner under paragraph (1) does not breach any obligation of confidence owed by them.

Date

*Name*  
Parliamentary Under Secretary of State  
Ministry of Defence

## SCHEDULE 1

Regulation 36(5)

Further provision in relation to investigations under regulation 36 (investigations by the Commissioner)

### PART 1

#### Modifications

1. The provisions specified in paragraphs 2 to 8 apply in relation to investigations under regulation 36 with the modifications specified in those paragraphs.

#### **Application of the Criminal Justice and Public Order Act 1994**

2.—(1) Sections 34 to 38 of the Criminal Justice and Public Order Act 1994<sup>(18)</sup>, as modified by the provisions of the Criminal Justice and Public Order Act 1994 (Application to the Armed Forces) Order 2009<sup>(19)</sup>, apply in relation to such investigations with the following modifications.

(2) Section 38 applies as if the definitions of “service policeman” and “authorised place of detention” were omitted.

(3) Any reference in sections 34 to 37 to—

- (a) a service policeman is to be read as a reference to a person designated under regulation 36(2) of these Regulations;
- (b) an authorised place of detention is to be read as a reference to premises used for the purposes of the functions of the Service Police Complaints Commissioner.

#### **Application of Part 3 and 4 of the Armed Forces Act 2006**

3.—(1) Parts 3 and 4 of the 2006 Act apply in relation to such investigations with the following modification.

(2) Any reference in those Parts to a service policeman is to be read as a reference to a person designated under regulation 36(2) of these Regulations.

#### **Application of the Criminal Procedure and Investigations Act 1996 (Code of Practice) (Armed Forces) Order 2009**

4.—(1) The Criminal Procedure and Investigations Act 1996 (Code of Practice) (Armed Forces) Order 2009<sup>(20)</sup> applies in relation to such investigations with the following modifications.

(2) Any reference to a service policeman in that Order is to be read as a reference to a person designated under regulation 36(2) of these Regulations.

(3) Article 1 of that Order and paragraph 2 of the Schedule (Code of Practice) are to be read as if the definitions of “service police force”, “service policeman” and “tri-service serious crime unit” were omitted.

(4) The Order is to be read as if article 2 were omitted.

(5) The Schedule is to be read as if—

- (a) in paragraph 2(1), for the definition of “disclosure officer” there were substituted—  
““disclosure officer” means the investigating officer responsible for—

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<sup>(18)</sup> 1994 c. 33.

<sup>(19)</sup> S.I. 2009/990. Sections 34 to 38 of the 1994 Act are modified by Article 2 of, and Schedule 1 and 2 to the Order.

<sup>(20)</sup> S.I. 2009/989, amended by S.I. 2018/682 and 2022/1051.

- (a) examining material retained by the Service Police Complaints Commissioner during the service investigation;
  - (b) revealing material to the Director during the service investigation and any proceedings in a service court resulting from it; and
  - (c) certifying that he has done this;”;
- (b) in paragraph 3(1), for “within each service police force or the tri-service serious crime unit” there were substituted “established by the Service Police Complaints Commissioner”;
- (c) in paragraph 3(3) the references to—
- (i) the Provost Marshal of each of the service police forces and the Provost Marshal for serious crime; and
  - (ii) the Provost Marshals,
- were references to the Service Police Complaints Commissioner;
- (d) in paragraph 3(7), for “either his officer commanding or the officer in charge of service investigations for the service police force concerned, or, as the case may be, the tri-service serious crime unit” there were substituted “the Service Police Complaints Commissioner”.

#### **Application of the Police and Criminal Evidence Act 1984 (Armed Forces) Order 2009**

5.—(1) The Police and Criminal Evidence Act 1984 (Armed Forces) Order 2009<sup>(21)</sup> applies in relation to such investigations with the following modifications.

- (2) The Order is to be read as if any reference to—
- (a) an authorising service policeman is a reference to an authorising officer;
  - (b) a service policeman (other than in the expression “authorising service policeman”) is a reference to a person designated under regulation 36(2) of these Regulations;
  - (c) a service police establishment is a reference to premises used for the purpose of the functions of the Service Police Complaints Commissioner;
  - (d) a Provost Marshal of a service police force is as a reference to the Service Police Complaints Commissioner.
- (3) Article 2 of that Order is to be read as if the definitions of “service police establishment” and “service policeman” were omitted.
- (4) Article 3 of that Order is to be read as if—
- (a) in paragraph (1) for “he is a service policeman of or above the rank of lieutenant commander, military or marine major or squadron leader”, there were substituted—  
“that person is the Service Police Complaints Commissioner or a senior investigating officer”;
  - (b) in paragraph (2) for “he is a service policeman of or above the rank of naval lieutenant, military or marine captain or flight lieutenant” there were substituted—  
“that person is the Service Police Complaints Commissioner or an investigating officer who is at least a deputy senior investigating officer”;
  - (c) in paragraph (3) for “any service policeman may act as an authorising service policeman if he is senior in rank to the service policeman seeking authorisation” there were substituted—

<sup>(21)</sup> S.I. 2009/1922, amended by S.I. 2013/2554 and 2022/1051.

“any investigating officer may act as an authorising officer if that officer is more senior than the officer seeking authorisation”.

(5) Article 15J is to be read as if any reference to a service police force or the tri-service serious crime unit were references to the Service Police Complaints Commissioner.

### **Application of the Armed Forces (Disposal of Property) Regulations 2009**

6.—(1) The Armed Forces (Disposal of Property) Regulations 2009<sup>(22)</sup> apply in relation to such investigations with the following modifications.

(2) Regulation 2 of those Regulations is to be read as if the definitions of “service police” and “a service policeman” were omitted.

(3) Any reference in those Regulations to—

(a) a service policeman, is to be read as a reference to a person designated under regulation 36(2) of these Regulations;

(b) the service police is to be read as a reference to the Service Police Complaints Commissioner.

### **Application of the Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009**

7.—(1) The Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009<sup>(23)</sup> applies in relation to such investigations with the following modifications.

(2) Any reference in that Order to a service policeman (other than in the expression “authorising service policeman”) is to be read as a reference to a person designated under regulation 36(2) of these Regulations.

(3) Any reference in that Order to an authorising service policeman is to be read as a reference to the Service Police Complaints Commissioner or to an investigating officer who is at least a deputy senior investigating officer.

(4) Article 2 of that Order is to be read as if the definition of “authorising service policeman” were omitted.

(5) Article 3(2) of that Order is to be read as if—

(a) for paragraph (a) there were substituted—

“(a) documentary evidence that they have been designated under regulation 36(2) of the Service Police (Complaints etc.) Regulations 2023,”;

(b) in paragraph (b) the words “whether he is in uniform or not” were omitted.

(6) That Order is to be read as if any reference to a person’s rank or rate, or to the name of a person’s unit or to its address and telephone number, were omitted.

### **Application of the Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021**

8.—(1) The Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021<sup>(24)</sup> applies in relation to the Service Police Complaints Commissioner’s functions under these Regulations in relation to such investigations with the following modifications.

<sup>(22)</sup> S.I. 2009/1923, amended by S.I. 2022/1051.

<sup>(23)</sup> S.I. 2009/2056, amended by S.I. 2012/2919 and 2014/934.

<sup>(24)</sup> 2021 asp 3.

(2) Subject to sub-paragraph (3), any reference in that Act to “a service police force” is to be read as a reference to “the Service Police Complaints Commissioner”.

(3) Any reference in that Act to “a member of a service police force” is to be read as a reference to “a person designated under regulation 36(2) of the Service Police (Complaints etc.) Regulations 2023”.

## PART 2

### Consequential Amendments

#### Amendment of the Police Act 1997

9.—(1) Part 3 of the Police Act 1997<sup>(25)</sup> is amended as follows.

(2) In section 93(authorisations to interfere with property etc.)—

(a) in subsection (3), after paragraph (aaa) insert—

“(aab) if the authorising officer is within subsection (5)(edb), by the investigating officer designated to take charge of the investigation under regulation 36(2)(a) of the Service Police (Complaints etc.) Regulations 2023 or a person designated under paragraph (2)(b) of that regulation to assist the person designated under sub-paragraph (a);”;

(b) after subsection (3ZA) insert—

“(3ZB) An authorisation under this section may be given by the authorising officer within subsection (5)(edb) only where it relates to the carrying out of the functions of the Service Police Complaints Commissioner.”;

(c) in subsection (5), after paragraph (eda) insert—

“(edb) the Service Police Complaints Commissioner;”;

(d) in subsection (6A) substitute “or (eda)” with “, (eda) or (edb)”.

(3) In section 94 (authorisations given in absence of authorising officer) in subsection (2), after paragraph (dca) insert—

“(dcb) where the authorising officer is within paragraph (edb) of that subsection, by a person designated by the Service Police Complaints Commissioner for the purposes of this section;”.

#### Amendment of the Regulation of Investigatory Powers Act 2000

10.—(1) Parts 2 and 4 of the Regulation of Investigatory Powers Act 2000<sup>(26)</sup> are amended as follows.

(2) In section 32 (authorisation of intrusive surveillance)—

(a) after subsection (3A), insert—

“(3B) In the case of an authorisation granted by the Service Police Complaints Commissioner, the authorisation is necessary on grounds falling within subsection (3) only if it is necessary for the purpose of carrying out the functions of the Commissioner.”.

(b) in subsection (6), after paragraph (ia) insert—

“(ib) the Service Police Complaints Commissioner;”.

<sup>(25)</sup> 1997 c. 50.

<sup>(26)</sup> 2000 c. 23.

- (3) In section 33 (rules for grant of authorisations)—
- (a) after subsection (2) insert—
- “(2A) A person who is a designated person for the purposes of section 28 or 29 by reference to that person’s office or position as a member of staff of the Service Police Complaints Commissioner, or as the Commissioner, must not grant an authorisation except on an application made by a person designated under regulation 36(2) of the 2023 Regulations;”;
- (b) after subsection (3ZZA) insert—
- “(3ZZB) The Service Police Complaints Commissioner must not grant an authorisation for the carrying out of intrusive surveillance except—
- (a) on an application made by a person designated under regulation 36(2) of the 2023 Regulations; and
- (b) in the case of an authorisation for the carrying out of any intrusive surveillance in relation to any residential premises, where those premises are in the area of operation of a police force mentioned in subsection (6)(d).”;
- (c) in subsection (5)(a), after “member of a police force,” insert “a person designated under regulation 36(2) of the 2023 Regulations,”.
- (4) In section 34 (grant of authorisations in the senior officer’s absence)—
- (a) in subsection (1)(a)(27), after “a member of the tri-service serious crime unit,” in the second place where those words occur, insert “a person designated under regulation 36(2) of the 2023 Regulations,”;
- (b) in subsection (2)(a)(28), after “Provost Marshal for serious crime or” insert “the Service Police Complaints Commissioner or”;
- (c) in subsection (4), after paragraph (ha), insert—
- “(hb) a person is entitled to act for the Service Police Complaints Commissioner if the person is designated by the Commissioner for the purposes of this paragraph as a person entitled so to act in an urgent case;”.
- (5) In section 35 (notification of authorisations for intrusive surveillance)—
- (a) in subsection (1)(29) after “tri-service serious crime unit,” insert “Service Police Complaints Commissioner,”;
- (b) in subsection (10)(30)—
- (i) in the opening words, after the words “tri-service serious crime unit,” insert “Service Police Complaints Commissioner,”; and
- (ii) after paragraph (aa) insert—
- “(ab) the Service Police Complaints Commissioner;”.
- (6) In section 36 (approval required for authorisation to take effect)—
- (a) in subsection (1) after paragraph (aa)(31) insert—
- “(ab) a person who has been designated under regulation 36(2) of the 2023 Regulations;”;

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(27) Paragraph (a) was amended to insert “members of the tri service crime unit” by paragraph 16(2) of Schedule 5 to the 2021 Act; there are other amendments that are not relevant to these Regulations.

(28) Paragraph (a) was amended to insert “as Provost Marshal for serious crime” by paragraph 16(3) of Schedule 5 to the 2021 Act.

(29) Subsection (1) was amended for the purposes of the tri-service serious crime unit by paragraph 17(2) of Schedule 5 the 2021 Act; there are other amendments not relevant to these Regulations.

(30) Subsection (10) was amended to add the words “tri-service serious crime unit”, by paragraph 17(3)(a) of Schedule 5 to the 2021 Act; there are other amendments not relevant to these Regulations.

(31) Paragraph (aa) was inserted by paragraph 18(2) of Schedule 5 to the 2021 Act.

- (b) in subsection (6)(32) after paragraph (aa) insert—
  - “(ab) where the authorisation was granted by the Service Police Complaints Commissioner or by a person entitled to act for the Commissioner by virtue of section 34(4)(hb), the Commissioner;”.
- (7) In section 37(1) (quashing of police and customs authorisations etc.), after paragraph (a) insert—
  - “(ab) a person designated under regulation 36(2) of the 2023 Regulations;”.
- (8) In section 46(3) (restrictions on authorisations extending to Scotland), after paragraph (dza) insert—
  - “(dzb) the Service Police Complaints Commissioner;”.
- (9) In section 48 (interpretation of Part II), in subsection (1) at the appropriate place insert—
  - “the 2023 Regulations” means the Service Police (Complaints etc.) Regulations 2023;”.
- (10) In section 65 (the Tribunal), in subsection (6) after paragraph (c) insert—
  - “(cza) the Service Police Complaints Commissioner;”.
- (11) In section 68(7) (Tribunal procedure), after paragraph (da) insert—
  - “(db) the Service Police Complaints Commissioner and every member of the Commissioner’s staff;”.
- (12) In Part 1 of Schedule 1 (authorisation of surveillance and covert human intelligence sources: relevant public authorities for the purposes of section 28 and 29), after paragraph 19A insert—
  - “**19B.** The Service Police Complaints Commissioner.”.

**Amendment of the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010**

- 11.—(1) The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010(33) is amended as follows.
- (2) In Part 1 of Schedule 1 (offices etc and restrictions in respect of public authorities specified in Part 1 of Schedule 1 to the Act), after the entry relating to the Royal Air Force Police, insert—

“The Service Police Complaints Commissioner	A senior investigating officer	An investigating officer	Paragraph (b)”
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SCHEDULE 2

Regulation 86

Consequential Amendments

**Amendment of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975**

- 1.—(1) The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975(34) is amended as follows.

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(32) Section 36(6) is amended by section 12 of, and paragraph 18(3)(a) of Schedule 5 to, the 2021 Act; there are other amendments not relevant to these Regulations.  
 (33) S.I. 2010/521.  
 (34) S.I. 1975/1023, to which there are amendments not relevant to these Regulations.



- (2) In article 3(1)(a)(ii), after “14E,” insert “14F.”
- (3) In article 4(1)(b), after “14E,” insert “14F.”
- (4) In Part II of Schedule 1, after paragraph 14E insert the following paragraph—
  - “**14F.** The Service Police Complaints Commissioner, or any member of the Commissioner’s staff who in the course of their normal duties—
    - (a) has contact with vulnerable adults; or
    - (b) has access to sensitive or personal information about children or vulnerable adults.”

### **Amendment of the Official Secrets Act 1989 (Prescription) Order 1990**

**2.** In the Official Secrets Act 1989 (Prescription) Order 1990<sup>(35)</sup>, at the end of Schedule 2 insert—

(a) “The Service Police Complaints Commissioner	(b) The members of the Commissioner’s staff who are not otherwise Crown servants”
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### **Amendment of the Armed Forces (Service Complaints Miscellaneous Provisions) Regulations 2015**

**3.—(1)** The Armed Forces (Service Complaints Miscellaneous Provisions) Regulations 2015<sup>(36)</sup> are amended as follows.

- (2) In regulation 5(2)—
  - (a) at the end of sub-paragraph (d) insert “or” after the semi-colon;
  - (b) at the end of sub-paragraph (e) substitute “; or” with a full-stop;
  - (c) omit paragraph (f);
- (3) In paragraph 1 of the Schedule—
  - (a) at the end of sub-paragraph (t) omit “or”;
  - (b) after sub-paragraph (u) insert—
    - “or
    - (v) is or was capable of being the subject of a complaint under the procedures established for making a complaint about the service police in accordance with section 340P of the Armed Forces Act 2006.”

<sup>(35)</sup> S.I. 1990/200, to which there are amendments not relevant to these Regulations.

<sup>(36)</sup> S.I. 2015/2064.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations provide the statutory framework and detailed rules in accordance with which the Service Police Complaints Commissioner (“the Commissioner”), established under section 365BA of the Armed Forces Act 2006 (“the 2006 Act”), has oversight of service police conduct and of complaints and other matters relating to the conduct of a member of each service police force including the four Provost Marshals. They broadly correspond to the provisions set out in and made under Part 2 of, and Schedule 3 to, the Police Reform Act 2002 (“the 2002 Act”) that apply to persons serving with the police in England and Wales, with modifications where necessary to reflect differences between the service police and the territorial police.

These Regulations also provide the basis for super-complaints that relate to the service police to be made to the Chief Inspector of Constabulary by a designated body. They broadly correspond to the provisions set out in and made under Part 2A of the 2002 Act.

Part 1 contains introductory provision (regulation 1) and an interpretation provision (regulation 2); this includes a definition of the “appropriate authority”, which performs a number of investigative functions under the framework established by these Regulations.

Part 2 sets out the general functions and duties of the Commissioner (regulations 3, 5 and 6) and makes provision for co-operation between the Commissioner and the Chief Inspector of Constabulary (“the Chief Inspector”) (regulation 4). It also sets out reporting requirements (regulation 7).

Part 3 sets out the procedure for handling complaints, conduct matters, and death and serious injury matters (“DSI matters”).

Chapter 1 sets out some general matters regarding application.

Chapter 2 sets out provisions for the handling of complaints; these relate to the duties on the appropriate authority to preserve evidence relating to complaints (regulation 11), handling and recording of complaints (regulations 12, 15 and 17), referring a complaint to the Commissioner (regulation 13) and imposes duties on the Commissioner when a complaint is so referred (regulation 16). Regulation 18 sets out provisions for a review of a complaint which has not been investigated.

Chapter 3 is concerned with the handling of conduct matters that come to an appropriate authority’s attention either as a result of proposed or actual civil proceedings or otherwise (regulations 21 and 22). This Chapter imposes further duties on the Commissioner in relation to handling of conduct matters.

Chapter 4 contains provisions relating to the handling of DSI matters and sets out the duty to record DSI matters (regulation 27) and preserve evidence (regulation 28). It also imposes duties on the Commissioner when a DSI matter is referred to the Commissioner.

Chapter 5 sets out the framework for investigations and subsequent proceedings, including the basis on which the Commissioner determines the form of an investigation in a matter referred to the Commissioner (regulation 32). This Chapter contains provisions relating to investigations by the appropriate authority on its own behalf (regulation 33) or directed by the Commissioner (regulation 34) or by investigators appointed by the Commissioner (regulation 36). Schedule 1 makes further provision in relation to investigatory powers for investigators appointed by the Commissioner. Schedule 2 makes consequential amendments.

Part 4 contains provision in relation to the making of super-complaints to the Chief Inspector by a designated body.

Chapter 1 provides for bodies designated by the Secretary of State to make super-complaints to the Chief Inspector about the service police forces and tri-service serious crime unit, and sets out the criteria that must be applied by the Secretary of State in deciding whether to designate a body and whether to revoke such a designation. It also provides for the Chief Inspector to issue guidance in relation to the making of super-complaints and sets out certain formal requirements for the making of such complaints (regulations 88 to 93).

Chapter 2 sets out certain duties that apply where a super-complaint has been made (regulations 94 to 97).

Chapter 3 sets out other matters relating to the investigation of super-complaints (powers to investigate and information sharing).

An impact assessment has not been prepared for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.