
DRAFT STATUTORY INSTRUMENTS

2023 No.

The Service Police (Complaints etc.) Regulations 2023

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(1) 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.

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—

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

- (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.