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DRAFT STATUTORY INSTRUMENTS

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**2023 No.**

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

**PART 3**

**Complaints etc.**

**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.