
DRAFT STATUTORY INSTRUMENTS

2023 No.

The Service Police (Complaints etc.) Regulations 2023

PART 3

Complaints etc.

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.