
DRAFT STATUTORY INSTRUMENTS

2023 No.

The Service Police (Complaints etc.) Regulations 2023

PART 3

Complaints etc.

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⁽¹⁾ (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⁽²⁾;
- (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—

(1) 1984 c. 60.

(2) 2016 c. 25.

- (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
 - (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⁽³⁾ 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.

(3) 2016 c. 25.

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.