
DRAFT STATUTORY INSTRUMENTS

2023 No.

The Service Police (Complaints etc.) Regulations 2023

PART 3

Complaints etc.

CHAPTER 5

Investigations and Subsequent Proceedings etc.

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.