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DRAFT STATUTORY INSTRUMENTS

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**2023 No.**

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

**PART 3**

**Complaints etc.**

**CHAPTER 5**

**Investigations and Subsequent Proceedings etc.**

**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 sub-paragraphs (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).