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STATUTORY INSTRUMENTS

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**2009 No. 2133**

**The UK Border Agency (Complaints  
and Misconduct) Regulations 2009**

**PART 5**

**INVESTIGATIONS**

**Inspections of the Secretary of State's premises on behalf of the IPCC**

**30.**—(1) Where—

- (a) the IPCC requires the relevant appropriate authority to allow a person nominated for the purpose by the IPCC to have access to any premises occupied by a relevant officer, relevant official of the Secretary of State or an official exercising customs revenue functions and to documents and other things on those premises, and
- (b) the requirement is imposed for any of the purposes mentioned in paragraph (2),

it shall be the duty of the relevant appropriate authority to secure that the required access is allowed to the nominated person.

(2) Those purposes are—

- (a) the purposes of any examination by the IPCC of the efficiency and effectiveness of the arrangements made by the relevant appropriate authority for handling complaints or dealing with recordable conduct matters or DSI matters;
- (b) the purposes of any investigation by the IPCC under this Part or of any investigation carried out under its supervision or management.

(3) A requirement imposed under this regulation for the purposes mentioned in paragraph (2) (a) must be notified to the relevant appropriate authority 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 that person seeks to have it,

the obligation to secure that the required access is allowed shall have effect as an obligation to secure that the access is allowed to that person at the earliest practicable time after there cease to be any such grounds as that 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 42 (investigations by the IPCC itself), or
  - (ii) any person who otherwise acts on behalf of the IPCC,

in that person's capacity as a constable or as a person with the powers and privileges of a constable; or

- (b) the obligations of the relevant appropriate authority under regulations 10 (co-operation, assistance and information) and 48 (provision of information to the IPCC).

### **Power of the IPCC to determine the form of an investigation**

**31.**—(1) This regulation applies where—

- (a) a complaint, recordable conduct matter or DSI matter is referred to the IPCC; and
- (b) the IPCC determines that it is necessary for the complaint or matter to be investigated.

(2) It shall be the duty of the IPCC to determine the form which the investigation should take.

(3) In making a determination under paragraph (2) the IPCC shall have regard to the following factors—

- (a) the seriousness of the case; and
- (b) the public interest.

(4) The only forms which the investigation may take in accordance with a determination made under this regulation are an investigation by—

- (a) the relevant appropriate authority on its own behalf;
- (b) a police force at the request of the relevant appropriate authority;
- (c) the relevant appropriate authority under the supervision of the IPCC;
- (d) a police force under the supervision of the IPCC;
- (e) the relevant authority under the management of the IPCC;
- (f) a police force under the management of the IPCC;
- (g) the IPCC.

(5) The IPCC may at any time make a further determination under this regulation to replace an earlier one.

(6) 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 relevant appropriate authority has already begun an investigation on its own behalf, the IPCC may give—

- (a) the relevant appropriate authority, and
- (b) any person previously appointed to carry out the investigation,

such directions as it considers appropriate for the purpose of giving effect to the new determination.

(7) It shall be the duty of a person to whom a direction is given under paragraph (6) to comply with it.

(8) The IPCC shall notify the relevant appropriate authority of any determination that it makes under this regulation in relation to a particular complaint or recordable conduct matter or DSI matter.

### **Appointment of persons to carry out investigations**

**32.**—(1) No person shall be appointed to carry out an investigation under regulations 38 (investigation by a police force at the request of the relevant appropriate authority) to 41 (investigations managed by the IPCC)—

- (a) unless that person has an appropriate level of knowledge, skills and experience to plan and conduct the investigation and to manage the resources that will be required during that process;

- (b) if that person has any social, financial or other connection, whether or not within the work environment, with the person whose conduct is being investigated which could, on an objective appraisal of the material facts, give rise to a legitimate fear as to whether that investigation can be carried out impartially;
- (c) if that person works, directly or indirectly, under the management of the person whose conduct is being investigated.

### **Power of the IPCC to impose requirements in relation to an investigation which it is supervising**

**33.**—(1) For the purposes of regulation 39(6) (investigations supervised by the IPCC) the requirements which may be imposed by the IPCC on a person appointed to investigate a complaint, recordable conduct matter or DSI matter are, subject to paragraph (2) any reasonable requirements as to the conduct of the investigation as appear to it to be necessary.

(2) The IPCC shall not, under paragraph (1), impose any requirement relating to the resources to be made available by the relevant appropriate authority for the purposes of an investigation without first consulting that person and having regard to any representations that person makes.

### **Combining and splitting investigations**

**34.**—(1) A relevant appropriate authority which is carrying out an investigation on its own behalf 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) Subject to paragraph (3), where the IPCC is supervising, managing or carrying out an investigation, it may—

- (a) combine that investigation with another investigation; or
- (b) split that investigation into two or more separate investigations,

if it considers that it is more efficient and effective, or is otherwise in the public interest, to do so.

(3) The IPCC shall not take any action under paragraph (2) in relation to a supervised or managed investigation except after consultation with the relevant appropriate authority.

### **Power of the IPCC to discontinue an investigation**

**35.**—(1) If, following a determination under regulations 22 (duties of the IPCC on references under regulation 21), 24 (duties of the IPCC on references under regulation 23) and 28 (duties of the IPCC on reference under regulation 27), it appears at any time to the IPCC (whether on an application by the relevant appropriate authority or otherwise) that a complaint or matter that is being investigated—

- (a) by the relevant appropriate authority on its own behalf, or
- (b) under the supervision or management of the IPCC,

is of a description of complaint or matter specified in paragraph (5), the IPCC may by order require the discontinuance of the investigation.

(2) Where the IPCC makes an order under this regulation or discontinues an investigation being carried out in accordance with regulation 42 (investigations by the IPCC itself), it shall give notification of the discontinuance—

- (a) to the relevant appropriate authority;

- (b) to every person entitled to be kept properly informed in relation to the subject matter of the investigation under regulation 50 (duty to provide information for other persons); and
- (c) in a case where the investigation that is discontinued is an investigation of a complaint, to the complainant.

(3) Subject to regulation 29 (procedure where conduct matter is revealed during investigation of DSI matter), where an investigation of a complaint or recordable conduct matter or DSI matter is discontinued in accordance with this regulation, neither the relevant appropriate authority nor the IPCC shall take any further action in accordance with the provisions of these Regulations in relation to that complaint or matter.

(4) The relevant appropriate authority shall comply with any order or notification given to it under this regulation.

(5) The descriptions of complaint or matter are—

- (a) one in which the complainant refuses to co-operate to the extent that the IPCC considers that it is not reasonably practicable to continue the investigation;
- (b) one which the IPCC considers is vexatious, oppressive or otherwise an abuse of the procedures for dealing with complaints, conduct matters or DSI matters;
- (c) one which is repetitious, as defined in paragraph (6); or
- (d) one which the IPCC otherwise considers is such as to make it not reasonably practicable to proceed with the investigation.

(6) A complaint is repetitious only if—

- (a) it is substantially the same as a previous complaint (whether made by or on behalf of the same or a different complainant), or it concerns substantially the same conduct as previous conduct matter;
- (b) it contains no fresh allegation which significantly affects the account of the conduct complained of;
- (c) no fresh evidence, being evidence which was not reasonably available at the time the previous complaint was made, is tendered in support of it; and
- (d) as respects the previous complaint or conduct matter, either—
  - (i) the requirements of regulation 63(2) (action by the IPCC in response to an investigation report under regulation 62) or 64(2) (determination by the relevant appropriate authority in response to an investigation report under regulation 62) were complied with;
  - (ii) the IPCC gave the relevant appropriate authority a direction under regulation 36(11) (b) (withdrawn and discontinued complaints);
  - (iii) the complainant gave such notification that he withdrew the complaint as mentioned in regulation 36(1)(a) (complainant withdraws the complaint).

(7) The cases in which the IPCC is authorised to discontinue an investigation that is being carried out in accordance with regulation 42 are any cases where the complaint, conduct matter or DSI matter under investigation falls within paragraph (5).

(8) Any application by a relevant appropriate authority to the IPCC for an order that it discontinue an investigation shall be in writing and shall be accompanied by—

- (a) a copy of the complaint, and
- (b) a memorandum from the relevant appropriate authority containing a summary of the investigation undertaken so far and explaining the reasons for the application to discontinue the investigation.

(9) The relevant appropriate authority shall—

- (a) send the complainant a copy of any such application on the same day as the day on which the application is sent to the IPCC, and
- (b) supply any further information requested by the IPCC for the purpose of considering that application.

(10) The IPCC shall not require the discontinuance of an investigation in a case where there has been no application to do so by the relevant appropriate authority unless it has consulted with that authority.

(11) A determination given to a relevant appropriate authority by the IPCC under regulation 31(4)

(a) (power of the IPCC to determine the form of an investigation) may—

- (a) require the relevant appropriate authority to produce an investigation report on the discontinued investigation;
- (b) where the investigation concerned a complaint, require the relevant appropriate authority to dispense with the requirements of these Regulations as respects that complaint;
- (c) direct the relevant appropriate authority to handle the matter in whatever manner (if any) that authority thinks fit.

(12) For the purposes of this regulation the steps that may be taken by the IPCC when an investigation is discontinued are—

- (a) to produce an investigation report on the discontinued investigation and take any subsequent steps required under these Regulations;
- (b) where the investigation concerned a complaint, to dispense with the requirements of these Regulations as respects that complaint;
- (c) to handle the matter in whatever manner it thinks fit.

### **Withdrawn and discontinued complaints**

**36.**—(1) If a relevant appropriate authority receives from a complainant notification in writing signed by the complainant or by a solicitor or other authorised agent on the complainant's behalf to the effect either—

- (a) that the complainant withdraws the complaint, or
- (b) that the complainant does not wish any further steps to be taken in consequence of the complaint,

then the relevant appropriate authority shall forthwith record the withdrawal or the fact that the complainant does not wish any further steps to be taken, as the case may be, and subject to paragraphs (2) to (12) shall cease to apply in respect of that complaint.

(2) Where a complainant gives such notification as is mentioned in paragraph (1) to the IPCC but, so far as is apparent to the IPCC, has not sent that notification to the relevant appropriate authority, then—

- (a) the IPCC shall send a copy of the notification to the relevant appropriate authority;
- (b) that relevant appropriate authority shall record the withdrawal or the fact that the complainant does not wish any further steps to be taken, as the case may be; and
- (c) subject to the following provisions of this regulation, these Regulations shall cease to apply in respect of that complaint.

(3) Where a complainant gives such notification as is mentioned in paragraph (1) to an relevant appropriate authority, or where the relevant appropriate authority receives a copy of a notification under paragraph (2), and it relates to a complaint—

- (a) which was referred to the IPCC under regulation 21(1) (reference of complaints to the IPCC) and which has not been referred back to the relevant appropriate authority under regulation 22(2) (duties of the IPCC on references under regulation 21);
- (b) which the relevant appropriate authority knows is currently the subject of an appeal to the IPCC under regulation 15 (failures to notify or record a complaint), or 70 (appeals to the IPCC with respect to an investigation) or
- (c) which was notified to the relevant appropriate authority by the IPCC under regulation 13(1) (initial handling and recording of complaints),

then the relevant appropriate authority shall notify the IPCC that it has recorded the withdrawal of the complaint or the fact that the complainant does not wish any further steps to be taken, as the case may be.

- (4) In a case falling within paragraph (3)(b) or (c), the relevant appropriate authority shall also—
  - (a) determine whether it is in the public interest for the complaint to be treated as a recordable conduct matter; and
  - (b) notify the IPCC of its determination and the reasons for the determination.

(5) In a case falling within paragraph (3)(a), the IPCC shall determine whether it is in the public interest for the complaint to be treated as a recordable conduct matter, and shall notify the relevant appropriate authority of its decision.

(6) Where a determination is made that a complaint is to be treated as a recordable conduct matter, then the provisions of these Regulations shall apply to that matter.

(7) Where a complainant gives such notification as is mentioned in paragraph (1) to an relevant appropriate authority, or where the relevant appropriate authority receives a copy of a notification under paragraph (2), and that notification relates to a complaint which does not fall within any of sub-paragraphs (a) to (c) of paragraph (3), then—

- (a) the relevant appropriate authority shall determine whether it is in the public interest for the complaint to be treated as a recordable conduct matter;
- (b) if the complaint is to be treated as a recordable conduct matter, the provisions of these Regulations shall apply to that matter;
- (c) if the complaint is not to be treated as a recordable conduct matter, the provisions of these Regulations shall cease to apply in respect of that complaint.

(8) In a case where—

- (a) a complaint has been subjected to an investigation by the relevant appropriate authority on its own behalf;
- (b) the complaint is currently subject to an appeal to the IPCC under regulation 70; and
- (c) the relevant appropriate authority has notified the IPCC under paragraph (4)(b) that it has determined that the complaint is not to be treated as a recordable conduct matter,

the IPCC shall consider whether it is in the public interest for that determination to be reversed, and if so it shall instruct the relevant appropriate authority to reverse the decision.

(9) Where a complainant indicates the wish to withdraw the complaint or the wish that no further steps are to be taken in consequence of the complaint, but the complainant fails to provide a notification to that effect in writing signed by or on behalf of the complainant, then—

- (a) in the case of an indication received by the relevant appropriate authority, the authority shall take the steps set out in paragraph (10);
- (b) in the case of an indication received by the IPCC, the IPCC shall refer the matter to the relevant appropriate authority which shall take the steps set out in paragraph (10).

(10) Those steps are—

- (a) the relevant appropriate authority shall write to the complainant to ascertain whether the complainant wishes to withdraw the complaint or does not wish any further steps to be taken in consequence of the complaint;
  - (b) if the complainant indicates the wish to withdraw the complaint or does not wish any further steps to be taken in consequence of the complaint, or if the complainant fails to reply within 21 days, the relevant appropriate authority shall treat the indication as though it had been received in writing signed by the complainant;
  - (c) if the complainant indicates the wish not to withdraw the complaint, or the wish that further steps be taken to be taken in consequence of the complaint, the relevant appropriate authority shall start or resume the investigation as the case may be.
- (11) The relevant appropriate authority shall notify the person complained against if—
- (a) it records the withdrawal of a complaint or the fact that the complainant does not wish any further steps to be taken;
  - (b) it determines that a complaint shall be treated as a recordable conduct matter;
  - (c) the IPCC determines that a complaint shall be treated as a recordable conduct matter;
  - (d) the IPCC instructs it to reverse a decision not to treat a complaint as a recordable conduct matter;
  - (e) the provisions of these Regulations cease to apply in respect of a complaint.

(12) But nothing in paragraph (11) shall require the relevant appropriate authority to make a notification if it has previously decided under regulation 56(3) (notification of complaints etc.) not to notify the person complained against of the complaint because it is of the opinion that that might prejudice any criminal investigation or pending proceedings or would be contrary to the public interest.

### **Investigations by the relevant appropriate authority on its own behalf**

**37.**—(1) This regulation applies if the relevant appropriate authority is required by virtue of any determination made by the IPCC under regulation 31 (power of the IPCC to determine the form of an investigation) to make arrangements for a complaint or recordable conduct matter or DSI matter to be investigated by the relevant appropriate authority on its own behalf.

(2) It shall be the duty of the relevant appropriate authority to appoint a person to investigate the complaint or matter.

### **Investigation by a police force at the request of the relevant appropriate authority**

**38.**—(1) This regulation applies where the relevant appropriate authority determines that there should be an investigation by a police force into an indication that a relevant officer, relevant official of the Secretary of State or an official exercising customs revenue functions may have committed a criminal offence in connection with a complaint, recordable conduct matter or DSI matter.

(2) The relevant appropriate authority shall identify the police force whose force area includes the geographical area to which the subject matter of the complaint, recordable conduct matter or DSI matter most closely relates, and take steps to obtain the agreement of the chief officer of police of that force to the appointment of that force to carry out the investigation.

(3) In the event that no agreement is reached under paragraph (2) the relevant appropriate authority may require the chief officer of police of any police force it considers appropriate to carry out the investigation.

(4) A chief officer of police of a police force who agrees to or is required to carry out an investigation shall, if that person has not already done so, appoint a person serving with the police who is a member of that force to investigate that complaint.

(5) Paragraphs (3) to (5) and (7) of regulation 40 (investigations supervised by the IPCC) shall apply as they apply to an investigation by the relevant appropriate authority which the IPCC has determined is one that it should supervise and the references to the relevant appropriate authority in those paragraphs shall be treated as references to the chief officer of police concerned.

(6) An appointment of a person under paragraph (4) or (5) shall be notified by the chief of police concerned to the relevant appropriate authority. The IPCC may require that no appointment is made under paragraph (4) unless it has given notice to the chief officer that it approves the person serving with the police whom he proposes to appoint.

(7) The person appointed to investigate the complaint or matter shall, in relation to an investigation under the management of the IPCC, be under the direction and control of the IPCC.

(8) The person appointed to investigate the complaint or matter shall comply with all such requirements in relation to the carrying out of that investigation as may be imposed by these Regulations.

### **Investigations supervised by the IPCC**

**39.**—(1) This regulation applies where the IPCC has determined that it should supervise the investigation by the relevant appropriate authority of any complaint or recordable conduct matter or DSI matter.

(2) On being given notice of that determination, the relevant appropriate authority shall, if it has not already done so, appoint a person to investigate the complaint or matter.

(3) The IPCC may require that no appointment is made under paragraph (2) unless it has given notice to the relevant appropriate authority that it approves the person whom that authority proposes to appoint.

(4) Where a person has already been appointed to investigate the complaint or matter, or is selected under this paragraph for appointment, and the IPCC is not satisfied with that person, the IPCC may require the relevant 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 IPCC of the person selected.

(5) Where a selection made in pursuance of a requirement under paragraph (4) has been notified to the IPCC, the relevant appropriate authority shall appoint that person to investigate the complaint or matter if, but only if, the IPCC notifies the authority that it approves the appointment of that person.

(6) The person appointed to investigate the complaint or matter shall comply with all such requirements in relation to the carrying out of that investigation as may be imposed by the IPCC in relation to that investigation.

### **Investigation by a police force under the management or under the supervision of the IPCC**

**40.**—(1) This regulation applies where the IPCC determines that there should be an investigation by a police force under the management or supervision of the IPCC.

(2) The IPCC shall—

- (a) identify the police force whose force area includes the geographical area to which the subject matter of the complaint, recordable conduct matter or DSI matter most closely relates, and
- (b) take steps to obtain the agreement of—
  - (i) the chief officer of police of that force, and



(ii) the relevant appropriate authority,

to the appointment by the IPCC of that force to carry out the investigation.

(3) In the event that no agreement is reached under paragraph (2) the IPCC may require the chief officer of police of any police force it considers appropriate to carry out the investigation.

(4) A chief officer of police of a police force who agrees to or is required to carry out an investigation shall, if that person has not already done so, appoint a person serving with the police who is a member of that force to investigate that complaint.

(5) Paragraphs (3) to (6) of regulation 39 (investigations supervised by the IPCC) shall apply as they apply to an investigation by the relevant appropriate authority which the IPCC has determined is one that it should supervise and the references to the relevant appropriate authority in those paragraphs shall be treated as references to the chief officer of police concerned.

(6) An appointment of a person under paragraph (4) shall be notified by the chief of police concerned to the relevant appropriate authority. The IPCC may require that no appointment is made under paragraph (4) unless it has given notice to the chief officer that it approves the person serving with the police whom he proposes to appoint.

(7) The person appointed to investigate the complaint or matter shall, in relation to an investigation under the management of the IPCC, be under the direction and control of the IPCC.

(8) The person appointed to investigate the complaint or matter shall comply with all such requirements in relation to the carrying out of that investigation as may be imposed by these Regulations.

#### **Investigations managed by the IPCC**

**41.**—(1) This regulation applies where the IPCC has determined that it should manage the investigation by the relevant appropriate authority of any complaint or recordable conduct matter or DSI matter.

(2) Paragraphs (2) to (6) of regulation 39 (investigations supervised by the IPCC) shall apply as they apply in the case of an investigation which the IPCC has determined is one that it should supervise.

(3) The person appointed to investigate the complaint or matter shall, in relation to that investigation, be under the direction and control of the IPCC.

#### **Investigations by the IPCC itself**

**42.**—(1) This regulation applies where the IPCC has determined that it should itself carry out the investigation of a complaint or recordable conduct matter or DSI matter.

(2) The IPCC shall designate both—

- (a) a member of the IPCC's staff to take charge of the investigation on behalf of the IPCC, and
- (b) all such other members of the IPCC's staff as are required by the IPCC to assist that member.

(3) A member of the IPCC's staff who—

- (a) is designated under paragraph (2) in relation to any investigation, but
- (b) does not already, by virtue of section 97(8) (police officers engaged on service outside their force) of the Police Act 1996(1) have all the powers and privileges of a constable throughout England and Wales and the adjacent United Kingdom waters,

shall for the purposes of the carrying out of the investigation and all purposes connected with it, have all those powers and privileges throughout England and Wales and those waters.

(4) A member of the IPCC's staff who is not a constable shall not, as a result of paragraph (3), be treated as being in police service for the purposes of—

(a) section 280 (police service) of the Trade Union and Labour Relations (Consolidation) Act 1992<sup>(2)</sup>; or

(b) section 200 (police officers) of the Employment Rights Act 1996<sup>(3)</sup>.

(5) References in this regulation to the powers and privileges of a constable—

(a) are references to any power or privilege conferred by or under any enactment (including one passed after the making of these Regulations) on a constable; and

(b) shall have effect as if every such power were exercisable, and every such privilege existed, throughout England and Wales and the adjacent United Kingdom waters (whether or not that is the case apart from this paragraph).

(6) In this regulation “United Kingdom waters” means the sea and other waters within the seaward limits of the United Kingdom's territorial sea.

### **Relinquishing the IPCC's supervision or management of an investigation**

**43.**—(1) This regulation applies where the IPCC—

(a) relinquishes the management of an investigation in favour of a supervised investigation or an investigation by the relevant appropriate authority on its own behalf, or

(b) relinquishes the supervision of an investigation in favour of an investigation by the relevant appropriate authority on its own behalf.

(2) Where this regulation applies, the IPCC—

(a) shall notify the relevant appropriate authority, the complainant, any interested person within the meaning of regulation 50 (duty to provide information for other persons) and the person complained against of its decision, and the reasons for that decision; and

(b) shall send to the relevant appropriate authority any documentation and evidence gathered during its investigations as will assist the relevant appropriate authority to carry out its functions under these Regulations.

(3) Nothing in paragraph (2)(a) shall require the IPCC to make a notification to the person complained against if it is of the opinion that that might prejudice any criminal investigation or pending proceedings or would be contrary to the public interest.

### **Circumstances in which an investigation or other procedure may be suspended**

**44.**—(1) The IPCC may suspend any investigation or other procedure under these Regulations which would, if it were to continue, prejudice any criminal proceedings.

(2) A relevant appropriate authority may, subject to paragraph (3), suspend any investigation or other procedure under these Regulations which would, if it were to continue, prejudice any criminal investigation or proceedings.

(3) The IPCC may direct that any investigation or other procedure under these Regulations which is liable to be suspended under paragraph (2) shall continue if it is of the view that it is in the public interest to make such a direction.

(4) The IPCC shall consult the relevant appropriate authority before making such a direction.

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(2) 1992 c.52.

(3) 1996 c.18.

### **Resumption of investigation after criminal proceedings**

**45.**—(1) Where the whole or part of the investigation of a complaint has been suspended until the conclusion of criminal proceedings, and after the conclusion of those proceedings the complainant has failed to express the wish for the investigation to start or be resumed, the IPCC or, as the case may be, the relevant appropriate authority shall take the steps set out in paragraph (2).

(2) The IPCC or relevant appropriate authority shall take all reasonable steps to contact the complainant to ascertain whether the complainant wants the investigation to start or be resumed as the case may be.

(3) If the complainant expresses the wish for the investigation to start or be resumed, the IPCC or the relevant appropriate authority shall start or resume the investigation as the case may be.

(4) The IPCC shall consult the relevant appropriate authority before starting or resuming the investigation.

(5) If the complainant indicates that the complainant does not want the investigation to start or be resumed, or if the complainant fails to reply within 21 days to a letter sent to the complainant by the IPCC or relevant appropriate authority, the IPCC or relevant appropriate authority as the case may be shall determine whether it is in the public interest for the complaint to be treated as a recordable conduct matter.

(6) If the IPCC or relevant appropriate authority determines that it is not in the public interest for the complaint to be treated as a recordable conduct matter, the provisions of these Regulations shall cease to apply to the complaint.

(7) If the IPCC or relevant appropriate authority determines that it is in the public interest for the complaint to be treated as a recordable conduct matter, regulations 17 (conduct matters arising in civil proceedings), 18 (recording etc. of conduct matters in other cases), 19 (duties to preserve evidence relating to conduct matters), 23 (reference of conduct matters to IPCC), 24 (duties of the IPCC on references under regulation 23) and the provisions of Part 4 (handling DSI matters) of these Regulations shall apply to the matter.

(8) The IPCC or relevant appropriate authority shall notify the person complained against if paragraph (5) or (6) applies.

(9) Nothing in paragraph (8) shall require the IPCC or relevant appropriate authority to make a notification if it is of the opinion that that might prejudice any criminal investigation or pending proceedings or would be contrary to the public interest.

### **Restrictions on proceedings pending the conclusion of an investigation**

**46.**—(1) No criminal or disciplinary proceedings shall be brought in relation to any matter which falls to be determined under these Regulations until a report on that investigation has been submitted to the IPCC or to the relevant appropriate authority under regulation 62 (final reports on investigations: complaints, conduct matters and certain DSI matters) or 65 (final reports on investigations: other DSI matters).

(2) Nothing in this regulation shall prevent the bringing of criminal or disciplinary proceedings in respect of any conduct at any time after the discontinuance of the investigation in accordance with the provisions of these Regulations which relates to that conduct.

(3) The restrictions imposed by this regulation in relation to the bringing of criminal proceedings shall not apply to the bringing of criminal proceedings by the Director of Public Prosecutions or, as the case may be, the Director of Revenue and Customs Prosecutions in any case in which it appears to that person that there are exceptional circumstances which make it undesirable to delay the bringing of such proceedings.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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(4) Where disciplinary proceedings are brought in relation to any matter which is the subject of an investigation under these Regulations, the relevant appropriate authority shall notify the IPCC of that fact before such proceedings are brought.