
STATUTORY INSTRUMENTS

2010 No. 1813

**The Revenue and Customs (Complaints
and Misconduct) Regulations 2010**

PART 8

REPORTS AND RECOMMENDATIONS

Final reports on investigations: complaints, conduct matters and certain DSI matters

66.—(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 44 (investigation by the appropriate authority on its own behalf) shall submit a report on that person's investigation to the appropriate authority.

(3) A person appointed under regulation 45 (investigations supervised by the IPCC), 46 (investigations by a police force under the management or under the supervision of the IPCC), or 47 (investigations managed by the IPCC) shall—

- (a) submit a report on that person's investigation to the IPCC; 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 36(5) (procedure where conduct matter is revealed during investigation of a DSI matter), the references in paragraphs (2) and (3) of this regulation 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 48 (investigations by the IPCC itself) as the person in charge of an investigation by the IPCC itself shall submit a report on the investigation to the IPCC.

(6) A person submitting a report under this regulation shall 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) A person who has submitted a report on an investigation under this regulation on an investigation within regulation 57(1) (duty to consider submissions from the person whose conduct is in question) must supply the appropriate authority with such copies of further documents or other items in that person's possession as the authority may request.

(8) The appropriate authority may only make a request under paragraph (7) 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 (9).
- (9) Those purposes are—
 - (a) complying with any obligation which the authority has under the disciplinary proceedings in relation to any person whose conduct is the subject-matter of the investigation;
 - (b) ensuring that any such officer (a person whose conduct is in question) receives a fair hearing at any disciplinary proceedings in respect of any such conduct of that officer.

Action by the IPCC in response to an investigation report under regulation 66

- 67.—(1) This regulation applies where—
- (a) a report on an investigation carried out under the management of the IPCC is submitted to it under paragraph (3) of regulation 66 (final report on investigations: complaints, conduct matters and certain DSI matters); or
 - (b) a report on an investigation carried out by a person designated by the IPCC is submitted to it under paragraph (5) of that regulation.
- (2) On receipt of the report, the IPCC—
- (a) if it appears that the appropriate authority has not already been sent a copy of the report, shall send a copy of the report to that authority;
 - (b) shall determine whether the conditions set out in paragraphs (3) and (4) are satisfied in respect of the report;
 - (c) if it determines that those conditions are so satisfied, shall notify the Director of Public Prosecutions or the Director of Revenue and Customs Prosecutions of the determination and send the Director a copy of the report; and
 - (d) shall notify the appropriate authority and the persons mentioned in paragraph (7) of its determination under sub-paragraph (b) and of any action taken by it under sub-paragraph (c).
- (3) The first condition is that the report indicates that a criminal offence may have been committed by a person to whose conduct the investigation related.
- (4) The second condition is that the circumstances are such that, in the opinion of the IPCC, it is appropriate for the matters dealt with in the report to be considered by the Director of Public Prosecutions or, as the case may be, the Director of Revenue and Customs Prosecutions.
- (5) The Director of Public Prosecutions or, as the case may be, the Director of Revenue and Customs Prosecutions shall notify the IPCC of any decision of the Director 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 Director under paragraph (2)(c).
- (6) It shall be the duty of the IPCC to notify the persons mentioned in paragraph (7) if criminal proceedings are brought against any person by the Director of Public Prosecutions or, as the case may be, the Director of Revenue and Customs Prosecutions in respect of any matters dealt with in a report copied to the Director under paragraph (2)(c).
- (7) Those 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 55 (duty to provide information for other persons); 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.
- (8) On receipt of the report, the IPCC shall also notify the appropriate authority that it must—

- (a) determine—
 - (i) whether any officer (person whose conduct is in question) has a case to answer in respect of their conduct or has no case to answer, and
 - (ii) what action (if any) the authority is required to, or will in its discretion, take in respect of the matters dealt with in the report; and
 - (b) determine what other action (if any) the authority will in its discretion take in respect of those matters.
- (9) On receipt of a notification under paragraph (8) the appropriate authority shall make those determinations and submit a memorandum to the IPCC which—
- (a) sets out the determinations the authority has made; and
 - (b) if the appropriate authority has decided in relation to any person whose conduct is the subject-matter of the report that disciplinary proceedings should not be brought against that person, sets out its reasons for so deciding.
- (10) On receipt of a memorandum under paragraph (9), the IPCC shall—
- (a) consider the memorandum and whether the appropriate authority has made the determinations under paragraph (8)(a) that the IPCC considers appropriate in respect of the matters dealt with in the report;
 - (b) determine, in the light of its consideration of those matters, whether or not to make recommendations under regulation 71 (duties with respect to disciplinary proceedings); and
 - (c) make such recommendations (if any) under that regulation as it thinks fit.
- (11) On the making of a determination under paragraph (10)(b) the IPCC shall give a notification—
- (a) in the case of a complaint, to the complainant and to every person entitled to be kept properly informed in relation to the complaint under regulation 55; and
 - (b) in the case of a recordable conduct matter, to every person entitled to be kept properly informed in relation to that matter under that regulation.
- (12) The notification required by paragraph (11) is one setting out—
- (a) the findings of the report;
 - (b) the IPCC's determination under paragraph (10)(b); and
 - (c) the action which the appropriate authority is to be recommended to take as a consequence of the determination.
- (13) Regulation 60 shall have effect in relation to the duties imposed on the IPCC by paragraph (11) of this regulation.
- (14) Except so far as may be otherwise provided by these Regulations, the IPCC shall be entitled (notwithstanding any obligation of secrecy imposed by any rule of law or otherwise) to discharge the duty to give a person mentioned in paragraph (11) notification of the findings of the report by sending that person a copy of the report.
- (15) In relation to a DSI matter in respect of which a determination has been made under regulation 36(2) or (4) (procedure where conduct matter is revealed during the investigation of a DSI matter), 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 66

- 68.—(1) This regulation applies where—
- (a) a report of an investigation is submitted to the appropriate authority in accordance with regulation 66(2); or
 - (b) a copy of a report on an investigation carried out under the supervision of the IPCC is sent to the appropriate authority in accordance with regulation 66(3).
- (2) On receipt of the report or (as the case may be) of the copy, the appropriate authority—
- (a) shall 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, shall notify the Director of Public Prosecutions or, as the case may be, the Director of Revenue and Customs Prosecutions of the determination and send the Director a copy of the report; and
 - (c) shall notify the persons mentioned in paragraph (7) 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 criminal offence may have been committed by a person 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 Director of Public Prosecutions or, as the case may be, the Director of Revenue and Customs Prosecutions.
- (5) The Director of Public Prosecutions or, as the case may be, the Director of Revenue and Customs Prosecutions shall notify the appropriate authority of any decision of the Director 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 Director under paragraph (2).
- (6) It shall be the duty of the appropriate authority to notify the persons mentioned in paragraph (7) if criminal proceedings are brought against any person by the Director of Public Prosecutions or, as the case may be, the Director of Revenue and Customs Prosecutions in respect of any matters dealt with in a report copied to the Director under paragraph (2)(b).
- (7) Those 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 55 (duty to provide information for other persons); 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.
- (8) In the case of a report falling within paragraph (1)(b) which relates to a recordable conduct matter, the appropriate authority shall also notify the IPCC of its determination under paragraph (2)(a).
- (9) On receipt of such a notification that the appropriate authority has determined that the conditions in paragraphs (3) and (4) are not satisfied in respect of the report, the IPCC—
- (a) shall make its own determination as to whether those conditions are so satisfied; and
 - (b) if it determines that they are so satisfied, shall direct the appropriate authority to notify the Director of Public Prosecutions or, as the case may be, the Director of Revenue and Customs Prosecutions of the IPCC's determination and send the Director a copy of the report.
- (10) It shall be the duty of the appropriate authority to comply with any direction given to it under paragraph (9)(b).

- (11) On receipt of the report or (as the case may be) copy, the appropriate authority shall also—
- (a) determine—
 - (i) whether any person to whose conduct the investigation related has a case to answer in respect of their conduct or has no case to answer, and
 - (ii) what action (if any) the authority is required to, or will in its discretion, take in respect of the matters dealt with in the report; and
 - (b) determine what other action (if any) the authority will in its discretion take in respect of those matters.
- (12) On the making of the determinations under paragraph (11) the appropriate authority shall give a notification—
- (a) in the case of a complaint, to the complainant and to every person entitled to be kept properly informed in relation to the complaint under regulation 55; and
 - (b) in the case of a recordable conduct matter, to every person entitled to be kept properly informed in relation to that matter under that regulation.
- (13) The notification required by paragraph (12) is one setting out—
- (a) the findings of the report;
 - (b) the determinations the authority has made under paragraph (11); and
 - (c) the complainant’s right of appeal under regulation 74 (appeals to the IPCC with respect to an investigation).
- (14) Regulation 60 shall have effect in relation to the duties imposed on the appropriate authority by paragraph (12) of this regulation.
- (15) Except so far as may be otherwise provided by these Regulations, the appropriate authority shall be entitled (notwithstanding any obligation of secrecy imposed by any rule of law or otherwise) to discharge the duty to give a person mentioned in paragraph (12) notification of the findings of the report by sending that person a copy of the report.
- (16) In relation to a DSI matter in respect of which a determination has been made under regulation 36(2) or (4), 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.

Final reports on investigations: other DSI matters

- 69.**—(1) This regulation applies on the completion of an investigation of a DSI matter in respect of which neither the IPCC nor the appropriate authority has made a determination under regulation 36(2) or (4) (procedure where conduct matter is revealed during investigation of DSI matter).
- (2) The person investigating shall—
 - (a) submit a report on the investigation to the IPCC; and
 - (b) send a copy of that report to the appropriate authority.
 - (3) A person submitting a report under this regulation shall not be 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.

Action by the IPCC in response to an investigation report under regulation 69

- 70.**—(1) On receipt of the report referred to in regulation 69, the IPCC shall determine whether the report indicates that an officer may have—
- (a) committed a criminal offence; or

(b) behaved in a manner which would justify the bringing of disciplinary proceedings.

(2) If the IPCC determines under paragraph (1) that there is no indication in the report that an officer may have—

(a) committed a criminal offence; or

(b) behaved in a manner which would justify the bringing of disciplinary proceedings,

it shall make such recommendations or give such advice (if any) under regulation 7 as it considers necessary or desirable.

(3) Paragraph (2) does not affect any power of the IPCC to make recommendations or give advice under regulation 7 in other cases (whether arising under these Regulations or otherwise).

(4) If the IPCC determines under paragraph (1) that the report indicates that an officer may have—

(a) committed a criminal offence; or

(b) behaved in a manner which would justify the bringing of disciplinary proceedings,

it shall notify the appropriate authority in relation to the person whose conduct is in question of its determination, and, 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.

(5) Where the appropriate authority in relation to the person whose conduct is in question is notified of a determination by the IPCC under paragraph (4), it shall record the matter under regulation 24 (recording etc. of conduct matters in other cases) as a conduct matter (and the other provisions of these Regulations shall apply in relation to that matter accordingly).

(6) Where a DSI matter is recorded under regulation 24 as a conduct matter by virtue of paragraph (5)—

(a) the person investigating the DSI matter shall (subject to any determination made by the IPCC under regulation 38(6) (power of the IPCC to determine the form of an investigation – further determination)) investigate the conduct matter as if appointed or designated to do so, and

(b) the other provisions of these Regulations shall apply in relation to that matter accordingly.

Duties with respect to disciplinary proceedings

71.—(1) This regulation applies where, in the case of any investigation, the appropriate authority—

(a) has given, or is required to give, a notification under regulation 68(12) (action by the appropriate authority in response to an investigation report under regulation 66) of the action it is proposing to take in relation to the matters dealt with in any report of the investigation; or

(b) has submitted, or is required to submit, a memorandum to the IPCC under regulation 67 (action by the IPCC in response to an investigation report under regulation 66) or 74 (appeals to the IPCC with respect to an investigation) setting out the action that it is proposing to take in relation to those matters.

(2) Subject to regulation 52 (restrictions on proceedings pending the conclusion of an investigation) and to any recommendations or directions under this regulation, it shall be the duty of the appropriate authority—

(a) to take the action which has been or is required to be notified or, as the case may be, which is or is required to be set out in the memorandum; and

(b) in a case where that action consists of or includes the bringing of disciplinary proceedings, to secure that those proceedings, once brought, are proceeded with to a proper conclusion.

(3) Where this regulation applies by virtue of paragraph (1)(b), the IPCC may make a recommendation to the appropriate authority in respect of any person whose conduct is in question—

- (a) that the person has a case to answer in respect of their conduct or has no case to answer in relation to their conduct to which the investigation related;
- (b) that disciplinary proceedings of the form specified in the recommendation are brought against that person in respect of the conduct to which the investigation related; or
- (c) that any disciplinary proceedings brought against that person are modified so as to deal with such aspects of that conduct as may be so specified;

and it shall be the duty of the appropriate authority to notify the IPCC whether it accepts the recommendation and (if it does) to set out in the notification the steps that it is proposing to take to give effect to it.

(4) If, after the IPCC has made a recommendation under this regulation, the appropriate authority does not take steps to secure that full effect is given to the recommendation—

- (a) the IPCC may direct the appropriate authority to take steps for that purpose; and
- (b) it shall be the duty of the appropriate authority to comply with the direction.

(5) A direction under paragraph (4) may, to such extent as the IPCC thinks fit, set out the steps to be taken by the appropriate authority in order to give effect to the recommendation.

(6) Where the IPCC gives the appropriate authority a direction under this regulation, it shall supply the appropriate authority with a statement of its reasons for doing so.

(7) Where disciplinary proceedings have been brought in accordance with a recommendation or direction under this regulation, it shall be the duty of the authority to ensure that they are proceeded with to a proper conclusion.

(8) The IPCC may at any time withdraw a direction given under this regulation; and paragraph (7) shall not impose any obligation in relation to any time after the withdrawal of the direction.

(9) The appropriate authority shall keep the IPCC informed—

- (a) in a case in which this regulation applies by virtue of paragraph (1)(b), of whatever action it takes in pursuance of its duty under paragraph (2); and
- (b) in every case of a recommendation or direction under this regulation, of whatever action it takes in response to that recommendation or direction.

Complaints against a person whose identity is unascertained

72.—(1) Where a complaint or conduct matter relates to the conduct of a person whose identity is unascertained at the time at which the complaint is made or the conduct matter is recorded, or whose identity is not ascertained during or subsequent to, the investigation of the complaint or recordable conduct matter, these Regulations shall apply in relation to such a person as if it did not include—

- (a) any requirement for the person complained against to be given a notification or an opportunity to make representations;
- (b) any requirement for the IPCC or the appropriate authority to determine whether a criminal offence may have been committed by the 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 an appropriate authority to determine whether disciplinary proceedings should be brought against a person whose conduct is the subject-matter of a report.

(2) Where the identity of such a person is subsequently ascertained, the IPCC and the appropriate authority shall take such action in accordance with these Regulations as they see fit, regardless of any previous action taken.