
STATUTORY INSTRUMENTS

2010 No. 782

**The UK Border Agency (Complaints
and Misconduct) Regulations 2010**

PART 8

APPEALS

Appeals to the IPCC: failures to notify or record a complaint

69.—(1) An appeal under regulation 15 against any failure referred to in regulation 15(3) (failures to notify or record a complaint) shall be made within 28 days of the date on which notification of that failure is made or sent to the complainant under regulation 15(2).

(2) Any such appeal shall be made in writing and shall state—

- (a) details of the complaint;
- (b) the date on which the complaint was made;
- (c) the grounds for the appeal; and
- (d) the date on which the complainant was notified of the determination or of the failure to record the complaint.

(3) Where the IPCC receives such an appeal it shall—

- (a) notify the relevant appropriate authority of the appeal; and
- (b) request any information from any person which it considers necessary to dispose of the appeal.

(4) Where the IPCC receives an appeal which fails to comply with one or more of the requirements mentioned in paragraph (2), it may decide to proceed as if those requirements had been complied with.

(5) The relevant appropriate authority shall supply to the IPCC any information reasonably requested under paragraph (3)(b).

(6) The IPCC shall determine the outcome of the appeal as soon as practicable.

(7) The IPCC shall notify the complainant and the relevant appropriate authority of the reasons for its determination.

(8) The IPCC may extend the time period mentioned in paragraph (1) in any case where it is satisfied that by reason of the special circumstances of the case it is just to do so.

Appeals to the IPCC with respect to an investigation

70.—(1) This regulation applies where a complaint has been subjected to—

- (a) an investigation by the relevant appropriate authority on its own behalf; or

- (b) an investigation under the supervision of the IPCC following a determination under regulation 21 (reference of complaints to the IPCC), 23 (reference of conduct matters to the IPCC) or 27 (reference of DSI matters to the IPCC).
- (2) The complainant shall have the following rights of appeal to the IPCC—
 - (a) a right to appeal on the grounds that the complainant has not been provided with adequate information—
 - (i) about the findings of the investigation; or
 - (ii) about any determination of the relevant appropriate authority relating to the taking (or not taking) of action in respect of any matters dealt with in the report on the investigation;
 - (b) a right to appeal against the findings of the investigation;
 - (c) a right of appeal against any determination by the relevant appropriate authority that a person to whose conduct the investigation related has a case to answer in respect of their conduct or has no case to answer;
 - (d) a right of appeal against any determination by a person appointed in accordance with regulation 38 (investigation by a police force at the request of the relevant appropriate authority) under regulation 63(2)(c) (action by the IPCC in response to an investigation report under regulation 62 or regulation 61(3) (action by police force on completion of an investigation report)); and
 - (e) where the complaint concerns the conduct of a relevant officer, relevant official of the Secretary of State or official exercising customs revenue functions, a right of appeal against any determination by the relevant appropriate authority relating to the taking (or not taking) of action in respect of any matters dealt with in the report, as a result of which it is not required to send the Director of Public Prosecutions or the Director of Revenue and Customs Prosecutions a copy of the report.
- (3) On the bringing of an appeal under this regulation, the IPCC may require the person investigating to submit a memorandum to the IPCC which—
 - (a) sets out whether the relevant appropriate authority has determined that a person to whose conduct the investigation related has a case to answer in respect of their conduct or has no case to answer;
 - (b) sets out what action (if any) the relevant appropriate authority has determined that it is required to or will, in its discretion, take in respect of the matters dealt with in the report;
 - (c) if the relevant appropriate authority is proposing to take any action, sets out what action it is proposing to take;
 - (d) if the relevant appropriate authority has decided in relation to a person to whose conduct the investigation related; that disciplinary proceedings should not be brought against that person, sets out its reasons for so deciding and it shall be the duty of the relevant appropriate authority to comply with any requirement under this paragraph; and
 - (e) if a person appointed in accordance with regulation 38 made a determination under regulation 63(2)(c) as a result of which it is not required to send the Director of Public Prosecutions or, as the case may be, the Director of Revenue and Customs Prosecutions a copy of the report relating to the investigation, sets out the reasons for that determination.
- (4) Where the IPCC so requires on the bringing of any appeal under this regulation in the case of an investigation by the relevant appropriate authority on its own behalf, the relevant appropriate authority shall provide the IPCC with a copy of the report of the investigation.
- (5) On an appeal under this regulation, the IPCC shall determine such of the following as it considers appropriate in the circumstances—

- (a) whether the complainant has been provided with adequate information about the matters mentioned in paragraph (2)(a);
 - (b) whether the findings of the investigation need to be reconsidered; and
 - (c) whether the relevant appropriate authority—
 - (i) has made such a determination as is mentioned in paragraph (3)(a) that the IPCC considers to be appropriate in respect of matters dealt with in the report, and
 - (ii) has determined that it is required to or will, in its discretion, take the action (if any) that the IPCC considers to be so appropriate; and
 - (d) whether the conditions set out in regulation 63(3) and (4) are satisfied in respect of the report on the investigation.
- (6) If, on an appeal under this regulation, the IPCC determines that the complainant has not been provided with adequate information about any matter, the IPCC shall give the person investigating all such directions as the IPCC considers appropriate for securing that the complainant is properly informed.
- (7) If, on an appeal under this regulation, the IPCC determines that the findings of the investigation need to be reconsidered, it shall either—
- (a) review those findings without an immediate further investigation; or
 - (b) direct that the complaint be re-investigated.
- (8) If, on an appeal under this regulation, the IPCC determines that the relevant appropriate authority has not made a determination as to whether there is a case for a person to whose conduct the investigation related to answer that the IPCC considers appropriate or has not determined that it is required to or will, in its discretion, take the action in respect of the matters dealt with in the report that the IPCC considers appropriate, the IPCC shall—
- (a) determine, in the light of that determination, whether or not to make recommendations under regulation 67 (duties with respect to disciplinary proceedings); and
 - (b) make such recommendations (if any) under that regulation as it thinks fit.
- (9) If, on an appeal under this regulation, the IPCC determines that the conditions set out in regulation 63(3) and (4) are satisfied in respect of the report, it shall direct the person appointed in accordance with regulation 38—
- (a) 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
 - (b) to send the Director a copy of the report.
- (10) The IPCC shall give notification of any determination under this regulation—
- (a) to the relevant appropriate authority;
 - (b) to the complainant;
 - (c) the person appointed in accordance with regulation 38 (if appropriate);
 - (d) to every person entitled to be kept properly informed in relation to the complaint under regulation 49 (duty to keep the complainant informed); and
 - (e) except in a case where it appears to the IPCC that to do so might prejudice any proposed review or re-investigation of the complaint, to the person complained against.
- (11) The IPCC shall also give notification of any directions given to a person under this regulation—
- (a) to the complainant;
 - (b) to every person entitled to be kept properly informed in relation to the complaint under regulation 50 (duty to provide information for other persons); and

- (c) except in a case where it appears to the IPCC that to do so might prejudice any proposed review or re-investigation of the complaint, to the person complained against.
- (12) The IPCC shall consult the relevant appropriate authority before giving it directions in accordance with paragraph (6), recommendations in accordance with paragraph (8), or a notification in accordance with paragraph (10) or (11) and shall have regard to any representations made to it by the relevant appropriate authority in giving those directions.
- (13) It shall be the duty of the person investigating to comply with any directions given to it under this regulation.
- (14) Any appeal made by a complainant under this regulation shall be made within 28 days of the date on which the person investigating sends a notification to the complainant of its determination under regulation 63(13) or 61(3) as to what action (if any) it will take in respect of the matters dealt with in the investigation report.
- (15) Any such appeal shall be in writing and shall state—
 - (a) details of the complaint;
 - (b) the date on which the complaint was made;
 - (c) the grounds for the appeal; and
 - (d) the date on which the complainant received notification under regulation 63(12) or 61(3).
- (16) Where the IPCC receives such an appeal it shall request any information from any person which it consider necessary to dispose of the appeal.
- (17) Where the IPCC receives an appeal which fails to comply with one or more of the requirements mentioned in paragraph (15), it may decide to proceed as if those requirements had been complied with.
- (18) The person investigating shall supply to the IPCC any further information requested of it under paragraph (16).
- (19) The IPCC shall determine the outcome of the appeal as soon as practicable.
- (20) The IPCC shall notify the complainant and the person investigating of the reasons for its determination.
- (21) The IPCC may extend the time period mentioned in paragraph (14) in any case where it is satisfied that by reason of the special circumstances of the case it is just to do so.

Reviews and re-investigations following an appeal

- 71.—**(1) On a review under regulation 70(7)(a) (appeals to the IPCC with respect to an investigation) of the findings of an investigation the powers of the IPCC shall be, according to its determination on that review, to do one or more of the following—
- (a) to uphold the findings in whole or in part;
 - (b) to give the person investigating such directions—
 - (i) as to the carrying out by the relevant appropriate authority of its own review of the findings,
 - (ii) as to the information to be provided to the complainant, and
 - (iii) generally as to the handling of the matter in future,
 as the IPCC thinks fit;
 - (c) to direct that the complaint be re-investigated.
- (2) Where the IPCC directs under regulation 70 or paragraph (1) that a complaint be re-investigated, it shall make a determination of the form that the re-investigation should take.

(3) Paragraphs (3) to (8) of regulation 31 (power of the IPCC to determine the form of an investigation) shall apply in relation to a determination under paragraph (2) as they apply in the case of a determination under that regulation.

(4) The provisions of these Regulations shall apply in relation to any re-investigation in pursuance of a direction under regulation 70(9) or paragraph (1) of this regulation as they apply in relation to any investigation in pursuance of a determination under regulation 31.

(5) The IPCC shall give notification of any determination made by it under this regulation—

- (a) to the relevant appropriate authority,
- (b) the person appointed in accordance with regulation 38 (investigation by a police force at the request of the relevant appropriate authority) or regulation 40 (investigation by a police force under the management or under the supervision of the IPCC),
- (c) to the complainant, and
- (d) to every person entitled to be kept properly informed in relation to the complaint under regulation 49 (duty to keep the complainant informed),

except in a case where it appears to the IPCC that to do so might prejudice any proposed re-investigation of the complaint, to the person complained against.

(6) The IPCC shall also give notification of any directions given to the person investigating under this regulation—

- (a) to the complainant, and
- (b) to every person entitled to be kept properly informed in relation to the complaint under section

except in a case where it appears to the IPCC that to do so might prejudice any proposed review or re-investigation of the complaint, to the person complained against.