

---

STATUTORY INSTRUMENTS

---

**2017 No. 521**

The Gangmasters and Labour Abuse Authority  
(Complaints and Misconduct) Regulations 2017

PART 2

COMPLAINTS AND MISCONDUCT

**Application: general**

4. These Regulations confer functions on the Commission in relation to the exercise of functions by officers of the Authority in their capacity as LAPOs.

**Application of the 2002 Act etc.**

5.—(1) The following provisions of, or made under, the 2002 Act apply in relation to the exercise of functions by officers of the Authority in their capacity as LAPOs with the modifications set out in paragraphs (2) to (4) below:

- (a) section 9 (the Independent Police Complaints Commission);
- (b) section 19 (use of investigatory powers by or on behalf of the Commission);
- (c) section 22(1) (power of the Commission to issue guidance);
- (d) section 24 (consultation on regulations);
- (e) any regulations made under section 27 (conduct of the Commission’s staff); and
- (f) any regulations made under Schedule 2 (the Independent Police Complaints Commission).

(2) Section 22 of the 2002 Act applies as if—

- (a) for subsection (1) there were substituted—

“(1) The Commission may issue guidance—

- (a) to the Chief Executive; and
- (b) to officers of the Authority who have been authorised by the Secretary of the State for the purposes of section 114B of the Police and Criminal Evidence Act 1984,

concerning the exercise or performance, by the persons to whom the guidance is issued, of any of the powers or duties specified in subsection (2).”;

- (b) in subsection (2)(b)(iii) for “persons serving with the police” there were substituted “labour abuse prevention officers”;

- (c) for subsection (3) there were substituted—

“(3) Before issuing any guidance under this section, the Commission must consult with—

---

(1) There are amendments to section 22 not relevant to these Regulations.

- (a) the Chief Executive; and
- (b) such other persons as it thinks fit.”;
- (d) in subsection (5)(b) for “the appropriate authority” there were substituted “the Chief Executive”; and
- (e) in subsection (5)(f) for “paragraph 23 or 25 of Schedule 3” there were substituted “regulations 69 and 73 of the Gangmasters and Labour Abuse Authority (Complaints and Misconduct) Regulations 2017”.
- (3) Section 24 of the 2002 Act applies as if for paragraphs (b) to (d)(2) there were substituted—
  - “(b) the Authority; and
  - (c) such other persons as the Secretary of State thinks fit.”.

(4) Where a provision listed in paragraph (1) (as modified by paragraphs (2) and (3)) contains a term that is defined in regulation 2 of these Regulations, the definition given in regulation 2 (rather than any definition contained in a provision of, or another provision made under, the 2002 Act) applies for the purposes of the application of the relevant provision in relation to the exercise of functions by officers of the Authority in their capacity as LAPOs.

### **General functions of the Commission under these Regulations**

- 6.—(1) The Commission must—
- (a) secure the maintenance by the Commission itself, and by the Chief Executive, of suitable arrangements with respect to the matters mentioned in paragraph (2);
  - (b) keep under review all arrangements maintained with respect to those matters;
  - (c) secure that arrangements maintained with respect to those matters—
    - (i) comply with the requirements of the provisions of these Regulations;
    - (ii) are efficient and effective; and
    - (iii) contain and manifest an appropriate degree of independence;
  - (d) secure that public confidence is established and maintained in the existence of suitable arrangements with respect to those matters and with the operation of the arrangements that are in fact maintained with respect to those matters; and
  - (e) make such recommendations, and give such advice, for the modification of the arrangements maintained with respect to those matters as appear, from the carrying out by the Commission of its other functions, to be necessary or desirable.
- (2) Those matters are—
- (a) the handling of complaints made about the conduct of a LAPO;
  - (b) the recording of matters from which it appears that there may have been conduct by a LAPO which constitutes or involves the commission of a criminal offence or behaviour justifying disciplinary proceedings;
  - (c) the recording of matters from which it appears that a person has died or suffered serious injury during, or following, contact with a LAPO; and
  - (d) the manner in which any such complaints or any such matters as are mentioned in paragraph (b) or (c) are investigated or otherwise handled and dealt with.
- (3) The Commission must—

---

(2) Paragraphs (b) to (c) were first substituted by paragraph 12 of Schedule 4 to the Police and Justice Act 2006 (c. 48). Paragraph (b), as substituted, was then substituted by paragraphs 277 and 289 of Schedule 16 to the Police Reform and Social Responsibility Act 2011 (c. 13).

- (a) exercise the powers and perform the duties conferred on it by the following provisions of these Regulations in the manner that it considers best calculated for the purpose of securing the proper carrying out of its functions under paragraph (1); and
- (b) secure that arrangements exist which are conducive to, and facilitate, the reporting of misconduct by LAPOs.

(4) Subject to the other provisions of these Regulations, the Commission may do anything which appears to it to be calculated to facilitate, or is incidental or conducive to, the carrying out of its functions under these Regulations.

(5) The Commission may, in connection with the making of any recommendation or the giving of any advice to any person for the purpose of carrying out its functions under paragraph (1)(c), (d) or (e), impose any such charge on that person for anything done by the Commission for the purposes of, or in connection with, the carrying out of its function as it thinks fit.

### **Reports to the Secretary of State**

7.—(1) As soon as practicable after the end of each of its financial years, the Commission must make a report to the Secretary of State on the carrying out of its functions under these Regulations during that year.

(2) The Commission must also make such reports to the Secretary of State about matters relating generally to the carrying out of its functions under these Regulations as the Secretary of State may, from time to time, require.

(3) The Commission may, from time to time, make such other reports to the Secretary of State as it considers appropriate for drawing the Secretary of State's attention to matters which—

- (a) have come to the Commission's notice; and
- (b) are matters that it considers should be drawn to the Secretary of State's attention by reason of their gravity or of other exceptional circumstances.

(4) The Commission must prepare such reports containing advice and recommendations as it thinks appropriate for the purpose of carrying out its function under regulation 6(1)(e).

(5) Where the Secretary of State receives any report under this regulation, the Secretary of State must—

- (a) in the case of every annual report under paragraph (1); and
- (b) in the case of any other report, if and to the extent that the Secretary of State considers it appropriate to do so,

lay a copy of the report before Parliament and cause the report to be published.

(6) The Commission must send a copy of every annual report under paragraph (1) and every report under paragraph (3) to the Chief Executive.

(7) The Commission must send a copy of every report under paragraph (4) to the Secretary of State and the Chief Executive.

(8) The Commission must send a copy of every report under paragraph (3) or (4) to such of the persons (in addition to those specified in the preceding paragraphs) who—

- (a) are referred to in the report; or
- (b) appear to the Commission otherwise to have a particular interest in its contents,

as the Commission thinks fit.

**Complaints and matters to which, and persons to whom, these Regulations apply**

8.—(1) In these Regulations, references to a complaint are references (subject to the following provisions of this regulation) to any complaint about the conduct of a LAPO which is made (whether in writing or otherwise) by—

- (a) a member of the public who claims to be the person in relation to whom the conduct took place;
- (b) a member of the public not falling within sub-paragraph (a) who claims to have been adversely affected by the conduct;
- (c) a member of the public who claims to have witnessed the conduct; or
- (d) a person authorised by a person falling within any of sub-paragraphs (a) to (c) to act on that person's behalf.

(2) References in these Regulations, in relation to anything which is or purports to be a complaint, to the complainant are references—

- (a) except in the case of anything which is or purports to be a complaint falling within paragraph (1)(d), to the person by whom the complaint or purported complaint was made; and
- (b) in that case, to the person on whose behalf the complaint or purported complaint was made,

but where any person is acting on another's behalf for the purposes of any complaint or purported complaint, anything that is to be or may be done under these Regulations or in relation to the complainant may be done instead by or in relation to the person acting on the complainant's behalf.

(3) References in these Regulations, in relation to any conduct or anything purporting to be a complaint about any conduct, to a member of the public do not include references to an officer of the Authority.

(4) For the purposes of these Regulations, a person is adversely affected if that person suffers any form of loss or damage, distress or inconvenience, if that person is put in danger or if that person is otherwise unduly put at risk of so suffering or being put in danger.

(5) In these Regulations, "conduct matter" means (subject to the following provisions of this regulation) any matter which is not and has not been the subject of a complaint but in the case of which there is an indication (whether from the circumstances or otherwise) that a LAPO may have—

- (a) committed a criminal offence; or
- (b) behaved in a manner which would justify the bringing of disciplinary proceedings.

(6) In these Regulations, "death or serious injury matter" (or "DSI matter" for short) means any circumstances (other than those which are or have been the subject of a complaint or which amount to a conduct matter)—

- (a) in or in consequence of which a person has died or has sustained serious injury; and
- (b) in relation to which the requirements of either paragraph (7) or (8) are satisfied.

(7) The requirements of this paragraph are that at the time of the death or serious injury the person—

- (a) had been arrested by a LAPO;
- (b) had not been released from that arrest; and
- (c) had not been delivered into the custody of a constable.

(8) The requirements of this paragraph are that—

- (a) at or before the time of death or serious injury the person had contact (of whatever kind, and whether direct or indirect) with a LAPO; and

(b) there is an indication that the contact may have caused (whether directly or indirectly) or contributed to the death or serious injury.

(9) In paragraph (6), the reference to a person includes an officer of the Authority, but in relation to such a person “contact” in paragraph (8) does not include contact that the person has whilst acting in the execution of that person’s duties as an officer of the Authority.

(10) The complaints that are complaints for the purposes of these Regulations by virtue of paragraph (1)(b) do not, except in a case falling within paragraph (11), include any made by or on behalf of a person who claims to have been adversely affected as a consequence only of having seen or heard the conduct, or any alleged effects of the conduct.

(11) A case falls within this paragraph if—

- (a) it was only because the person in question was physically present, or sufficiently nearby, when the conduct took place or the effects occurred that the person was able to see or hear the conduct or its effects; or
- (b) the adverse effect is attributable to, or was aggravated by, the fact that the person in relation to whom the conduct took place was already known to the person claiming to have suffered the adverse effect.

(12) For the purposes of this regulation, a person is to be taken to have witnessed conduct if, and only if—

- (a) the person’s knowledge of that conduct was acquired in a manner which would make that person a competent witness capable of giving admissible evidence of that conduct in criminal proceedings; or
- (b) the person has possession or control of anything which would in any such proceedings constitute admissible evidence of that conduct.

(13) For the purposes of these Regulations, a person falling within paragraph (1)(a) to (c) is not to be taken to have authorised another person to act on that person’s behalf unless—

- (a) the person so acting is for the time being designated for the purposes of this regulation by the Commission as a person through whom complaints may be made, or is of a description of persons so designated; or
- (b) the person so acting has been given, and is able to produce, the written consent of the person on whose behalf the person is acting.

### **General duties of the Chief Executive**

9.—(1) The Chief Executive must, in relation to LAPOs, keep abreast of—

- (a) matters with respect to which any provision of these Regulations has effect;
- (b) anything which is done under or for the purposes of any such provision; and
- (c) any obligations to act or refrain from acting that have arisen by or under these Regulations but have not yet been complied with, or have been contravened.

(2) The Chief Executive must provide the Commission and every member of the Commission’s staff with all such assistance as the Commission or that member of staff may reasonably require for the purposes of, or in connection with, the carrying out of an investigation by the Commission under these Regulations.

(3) The Chief Executive must ensure that a person appointed under regulation 41, 42 or 43 (investigations by the Chief Executive on the Chief Executive’s own behalf, supervised and managed investigations) to carry out an investigation is given all such assistance and co-operation in the carrying out of that investigation as that person may reasonably require.

### **Payment for assistance with investigations**

- 10.**—(1) This regulation applies where—
- (a) a person serving with the police or a National Crime Agency officer is appointed to investigate a complaint or matter further to arrangements made in pursuance of regulation 41(3)(b) or 42(2)(b) (including in a case where that regulation applies by virtue of regulation 43(2)) (investigations by the Chief Executive on the Chief Executive’s own behalf, supervised and managed investigations);
  - (b) a person appointed under regulation 41, 42 or 43 to carry out an investigation requests assistance from a police force or the National Crime Agency in connection with the investigation, and the police force or National Crime Agency provides that assistance; or
  - (c) the Commission or a member of the Commission’s staff requests assistance from a police force or the National Crime Agency in connection with an investigation under these Regulations, and the police force or National Crime Agency provides that assistance.
- (2) In a case where this regulation applies by virtue of paragraph (1)(a) or (b), the Chief Executive must pay to the local policing body maintaining the relevant police force or the National Crime Agency (as the case may be) such contribution (if any) towards the costs of the assistance—
- (a) as may be agreed between them;
  - (b) in the absence of an agreement, as may be determined in accordance with any arrangements which—
    - (i) have been agreed to by local policing bodies generally or the National Crime Agency (as the case may be) and the Chief Executive; and
    - (ii) are for the time being in force with respect to the making of contributions towards the costs of assistance provided in connection with investigations under these Regulations; or
  - (c) in any other case, as may be determined by the Secretary of State.
- (3) In a case where this regulation applies by virtue of paragraph (1)(c), the Commission must pay to the local policing body maintaining the relevant police force or the National Crime Agency (as the case may be) such contribution (if any) towards the costs of the assistance—
- (a) as may be agreed between them;
  - (b) in the absence of an agreement, as may be determined in accordance with any arrangements which—
    - (i) have been agreed to by local policing bodies generally or the National Crime Agency (as the case may be) and the Commission; and
    - (ii) are for the time being in force with respect to the making of contributions towards the costs of assistance provided in connection with investigations under these Regulations; or
  - (c) in any other case, as may be determined by the Secretary of State.

### **Provision of information to the Commission**

- 11.**—(1) The Chief Executive must—
- (a) provide the Commission with all such information and documents specified or described in a notification given by the Commission to the Chief Executive; and
  - (b) produce or deliver up to the Commission all such evidence and other things so specified or described,

as appear to the Commission to be required by it for the purposes of the carrying out of any of its functions.

(2) Anything falling to be provided, produced or delivered up by the Chief Executive in pursuance of a requirement imposed under paragraph (1) must be provided, produced or delivered up in such form, in such manner and within such period as may be specified in—

- (a) the notification imposing the requirement; or
- (b) any subsequent notification given by the Commission to the Chief Executive for the purposes of this paragraph.

(3) Nothing in this regulation requires the Chief Executive—

- (a) to provide the Commission with any information or document, or to produce or deliver up any other thing, before the earliest time at which it is practicable for the Chief Executive to do so; or
- (b) to provide, produce or deliver up anything at all in a case in which it never becomes practicable for the Chief Executive to do so.

(4) A requirement imposed by any notification under this regulation may authorise or require information or documents to which it relates to be provided to the Commission electronically.

(5) Where the Commission or any person acting on the Commission's behalf obtains information from the Chief Executive in the course of performing a function under these Regulations, that information—

- (a) may not be used for any purpose other than in the performance of a function under these Regulations or as otherwise prescribed by law; and
- (b) may not be disclosed except as permitted under these Regulations or as otherwise prescribed by law.

### **Inspection of premises on behalf of the Commission**

12.—(1) Where—

- (a) the Commission requires the Chief Executive to allow a person nominated for the purpose by the Commission to have access to any premises occupied for the purpose of the Authority and to documents or other things on those premises; and
- (b) the requirement is imposed for any of the purposes mentioned in paragraph (2),

the Chief Executive must secure that the required access is allowed to the nominated person.

(2) Those purposes are—

- (a) the purposes of any examination by the Commission of the efficiency and effectiveness of the arrangements made by the Chief Executive for handling complaints or dealing with recordable conduct matters or DSI matters;
- (b) the purposes of any investigation by the Commission under these Regulations 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 Chief Executive 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 access is sought,

the obligation to ensure that the required access is allowed has 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 44 (investigations by the Commission itself); or
    - (ii) any person who otherwise acts on behalf of the Commission, 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 Chief Executive under regulations 9 and 11.

### **Duty to keep the complainant informed**

**13.**—(1) Subject to regulation 16 (exceptions to the duty to keep the complainant informed and to provide information for other persons), in any case in which there is an investigation of a complaint in accordance with the provisions of these Regulations—

- (a) by the Commission; or
- (b) under its management,

the Commission must provide the complainant with all such information as will keep the complainant properly informed, while the investigation is being carried out and subsequently, of all the matters mentioned in paragraph (4).

(2) Subject to regulation 16, in any case in which there is an investigation of a complaint in accordance with the provisions of these Regulations—

- (a) by the Chief Executive on the Chief Executive's own behalf; or
- (b) under the supervision of the Commission,

the Chief Executive must provide the complainant with all such information as will keep the complainant properly informed, while the investigation is being carried out and subsequently, of all the matters mentioned in paragraph (4).

(3) Where paragraph (2) applies—

- (a) the Commission must give the Chief Executive all such directions as it considers appropriate for securing that the Chief Executive complies with its duty under that paragraph; and
- (b) the Chief Executive must comply with any direction given under this paragraph.

(4) The matters are—

- (a) the progress of the investigation;
- (b) any provisional findings of the person carrying out the investigation;
- (c) whether any report has been submitted under regulation 68 (final reports on investigations: complaints and conduct matters);
- (d) the action (if any) that is taken in respect of any of the matters dealt with in any such report; and
- (e) the outcome of any action.

(5) A person appointed or designated to carry out an investigation under these Regulations must provide the Commission or, as the case may be, the Chief Executive with all such information as



the Commission or the Chief Executive may reasonably require for the purpose of performing the Commission's or the Chief Executive's duty under this regulation.

**Duty to provide information for other persons**

14.—(1) A person has an interest in being kept properly informed about the handling of a complaint, recordable conduct matter or DSI matter which is the subject of an investigation in accordance with the provisions of these Regulations if—

- (a) it appears to the Commission or to the Chief Executive that the person is a person falling within paragraph (2) or (3); and
- (b) that person has indicated consent to the provision of information in accordance with this regulation and that consent has not been withdrawn.

(2) A person falls within this paragraph if, in the case of a complaint or recordable conduct matter, that person—

- (a) is a relative of a person whose death is the alleged result of the conduct complained of, or to which the recordable conduct matter relates;
- (b) is a relative of a person whose serious injury is the alleged result of that conduct and that person is incapable of making a complaint; or
- (c) has suffered serious injury as the alleged result of that conduct.

(3) A person falls within this paragraph if, in the case of a DSI matter, that person—

- (a) is a relative of a person who has died;
- (b) is a relative of a person who has suffered serious injury and that person is incapable of making a complaint; or
- (c) is the person who has suffered serious injury.

(4) A person who does not fall within paragraph (2) or (3) has an interest in being kept properly informed about the handling of a complaint, conduct matter or DSI matter if—

- (a) the Commission or the Chief Executive considers that the person has an interest in the handling of the complaint, recordable conduct matter or DSI matter which is sufficient to make it appropriate for information to be provided to that person in accordance with this regulation; and
- (b) that person has indicated consent to the provision of information in accordance with this regulation.

(5) In relation to a complaint, this regulation confers no rights on the complainant.

(6) A person who has an interest in being kept properly informed about the handling of a complaint, conduct matter or DSI matter is referred to in this regulation and regulation 15 as an "interested person".

(7) Subject to regulation 16 (exceptions to the duty to keep the complainant informed and to provide information for other persons), in any case in which there is an investigation of a complaint, recordable conduct matter or DSI matter in accordance with these Regulations—

- (a) by the Commission; or
- (b) under its management,

the Commission must provide the interested person with all such information as will keep the interested person properly informed, while the investigation is being carried out and subsequently, of all the matters mentioned in paragraph (10).

(8) Subject to regulation 16, in any case in which there is an investigation of a complaint, recordable conduct matter or DSI matter in accordance with these Regulations—

- (a) by the Chief Executive on the Chief Executive's own behalf; or
- (b) under the supervision of the Commission,

the Chief Executive must provide the interested person with all such information as will keep the interested person properly informed, while the investigation is being carried out and subsequently, of all the matters mentioned in paragraph (10).

(9) Where paragraph (8) applies—

- (a) the Commission must give the Chief Executive all such directions as it considers appropriate for securing that the Chief Executive complies with the Chief Executive's duty under that paragraph; and
- (b) the Chief Executive must comply with any direction given under this paragraph.

(10) The matters are—

- (a) the progress of the investigation;
- (b) any provisional findings of the person carrying out the investigation;
- (c) whether the Commission or the Chief Executive has made a determination under regulation 67 (procedure where a conduct matter is revealed during investigation of a DSI matter);
- (d) whether any report has been submitted under regulation 68 (final reports on investigations: complaints and conduct matters) or regulation 71 (final reports on investigations: DSI matters);
- (e) the action (if any) the Commission has taken in respect of any of the matters dealt with in any such report; and
- (f) the outcome of any action.

(11) Regulation 13(5) (duty to keep complainant informed) applies for the purposes of this regulation, as it applies for the purposes of that regulation.

(12) In this regulation, "relative" means any spouse, partner, parent or adult child.

### **Manner in which duties to provide information are to be performed**

**15.**—(1) For the purposes of regulations 13 and 14 (duties to keep complainant and other persons informed), the manner in which the Commission or, as the case may be, the Chief Executive must perform the duties imposed by those regulations is as follows.

(2) The Commission, in a case falling within regulation 13(1) or 14(7) (investigation of a complaint, conduct matter or DSI matter by or under the management of the Commission), must inform the complainant or, as the case may be, each interested person of—

- (a) the progress of the investigation promptly and in any event—
  - (i) if there has been no previous notification, within four weeks of the start of the investigation; and
  - (ii) in any other case, within four weeks of the previous notification;
- (b) any provisional findings of the person carrying out the investigation as frequently as the Commission determines to be appropriate in order for the complainant or, as the case may be, each interested person to be kept properly informed.

(3) The Chief Executive, in a case falling within regulation 13(2) or 14(8) (investigation of a complaint, conduct matter or DSI matter by the Chief Executive on the Chief Executive's own behalf or under the supervision of the Commission), must inform the complainant or, as the case may be, each interested person of—

- (a) the progress of the investigation promptly and in any event—

- (i) if there has been no previous notification, within four weeks of the start of the investigation; and
  - (ii) in any other case, within four weeks of the previous notification;
- (b) any provisional findings of the person carrying out the investigation as frequently as the Chief Executive determines to be appropriate in order for the complainant or, as the case may be, each interested person to be kept properly informed.
- (4) When an investigation has been completed, any complainant and interested person must be notified of the date on which—
  - (a) the final report under regulation 68 or 71 (final reports on investigations: complaints, conduct matters and DSI matters) is likely to be submitted; and
  - (b) the notification under regulation 69(11) or 70(12) (action by the Commission or Chief Executive in response to an investigation report) is likely to be given.
- (5) In performing the duties imposed by regulations 13(1) and (2), 14(7) and (8), 69(11) and 70(12), the Commission or, as the case may be, the Chief Executive must determine whether it is appropriate to offer, or to accede to a request for, a meeting with the complainant or, as the case may be, an interested person.
- (6) As soon as practicable after any such meeting, the Commission or, as the case may be, the Chief Executive must send to the complainant or interested person a written record of the meeting and an account of how any concerns of that person will be addressed.
- (7) As soon as practicable after the conclusion of any disciplinary proceedings or unsatisfactory performance proceedings that are taken in respect of the matters dealt with in any report submitted under regulation 68, the Chief Executive must notify any complainant and interested person of the outcome of those proceedings, including the fact and outcome of any appeal against the outcome of the proceedings.
- (8) If the Commission or, as the case may be, the Chief Executive considers that an investigation has made minimal or no progress since the previous notification, the next notification may be made by any means that in the opinion of the Commission or, as the case may be, the Chief Executive is suitable.
- (9) Any notification under this regulation must be given in writing, except in a case where the notification is given at a meeting held in consequence of a determination under paragraph (5) or it is given by means other than writing in accordance with paragraph (8).

**Exceptions to the duty to keep the complainant informed and to provide information for other persons**

**16.**—(1) Subject to paragraph (3), the duties mentioned in regulation 13(1) and (2) (duty to keep complainant informed), regulation 14(7) and (8) (duty to provide information for other persons), regulation 69(11) and regulation 70(12) do not apply in circumstances where, in the opinion of the Commission, or, as the case may be, of the Chief Executive, the non-disclosure of information is necessary for the purpose of—

- (a) preventing the premature or inappropriate disclosure of information that is relevant to, or may be used in, any actual or prospective criminal proceedings;
- (b) preventing the disclosure of information in any circumstances in which its non-disclosure is—
  - (i) in the interests of national security;
  - (ii) for the purposes of the prevention or detection of crime, or the apprehension or prosecution of offenders;
  - (iii) required on proportionality grounds; or

(iv) otherwise necessary in the public interest.

(2) The non-disclosure of information is required on proportionality grounds if its disclosure would cause, directly or indirectly, an adverse effect which would be disproportionate to the benefits arising from its disclosure.

(3) The Commission or, as the case may be, the Chief Executive must not conclude that the non-disclosure of information is necessary under paragraph (1) unless it or, as the case may be, the Chief Executive is satisfied that—

- (a) there is a real risk of the disclosure of that information causing an adverse effect; and
- (b) that adverse effect would be significant.

(4) Without prejudice to the generality of paragraph (1), the Commission or, as the case may be, the Chief Executive must consider whether the non-disclosure of information is justified under that paragraph in circumstances where—

- (a) that information is relevant to, or may be used in, any actual or prospective disciplinary proceedings or unsatisfactory performance proceedings;
- (b) the disclosure of that information may lead to the contamination of the evidence of witnesses during such proceedings;
- (c) the disclosure of that information may prejudice the welfare or safety of any third party;
- (d) that information constitutes criminal intelligence.