
STATUTORY INSTRUMENTS

2017 No. 521

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

PART 4

HANDLING OF CONDUCT MATTERS

Conduct matters arising in civil proceedings

28.—(1) This regulation applies where—

- (a) the Chief Executive has received notification (whether or not under this regulation) that civil proceedings relating to any matter have been brought by a member of the public against the Authority, or it otherwise appears to the Chief Executive that such proceedings are likely to be so brought; and
- (b) it appears to the Chief Executive (whether at the time of the notification or at any time subsequently) that those proceedings involve or would involve a conduct matter.

(2) The Chief Executive must determine whether the matter is one which the Chief Executive is required to refer to the Commission under regulation 32 or is one which it would be appropriate to so refer.

(3) In a case where the Chief Executive determines that the matter is one which the Chief Executive is required to refer to the Commission under regulation 32 or is one which it would be appropriate to so refer, the Chief Executive must record the matter.

(4) In any other case, the Chief Executive must determine whether the matter is repetitive within the meaning of regulation 30.

(5) In a case where the Chief Executive determines that the matter is not repetitive within the meaning of regulation 30, the Chief Executive must record the matter.

(6) In any other case, the Chief Executive may (but need not) record the matter.

(7) In a case where the Chief Executive—

- (a) records a matter under this regulation; and
- (b) is not required to refer the matter to the Commission under regulation 32 and does not do so,

the Chief Executive may deal with the matter in such other manner (if any) as the Chief Executive may determine.

(8) Nothing in paragraph (3) or (5) requires the Chief Executive to record any conduct matter if the Chief Executive is satisfied that the matter has been, or is already being, dealt with by means of criminal or disciplinary proceedings against the person to whose conduct the matter relates.

(9) For the purposes of this regulation, civil proceedings involve a conduct matter if—

- (a) they relate to such a matter; or

- (b) they are proceedings that relate to a matter in relation to which a conduct matter, or evidence of a conduct matter, is or may be relevant.

Recording etc. of conduct matters in other cases

29.—(1) This regulation applies where—

- (a) a conduct matter comes (otherwise than as mentioned in regulation 28) to the attention of the Chief Executive; and
- (b) it appears to the Chief Executive that the conduct involved in that matter falls within paragraph (2).

(2) Conduct falls within this paragraph if (assuming it to have taken place)—

- (a) it appears to have resulted in the death of any person or in serious injury to any person;
- (b) a member of the public has been adversely affected by it; or
- (c) it is of a description specified in paragraph (3).

(3) The following descriptions of conduct are specified for the purposes of paragraph (2)—

- (a) a serious assault, as defined in guidance issued by the Commission;
- (b) a serious sexual offence, as defined in guidance issued by the Commission;
- (c) serious corruption, as defined in guidance issued by the Commission;
- (d) a criminal offence or behaviour which is liable to lead to disciplinary proceedings and which in either case was aggravated by discriminatory behaviour on the grounds of a person's race, sex, religion, or other status identified in guidance by the Commission;
- (e) a relevant offence;
- (f) conduct the gravity of which, or other exceptional circumstances, make it appropriate to record the matter in which the conduct is involved; or
- (g) conduct which is alleged to have taken place in the same incident as one in which conduct within sub-paragraph (a) to (f) is alleged.

(4) The Chief Executive must determine whether the matter is one which the Chief Executive is required to refer to the Commission under regulation 32 or is one which it would be appropriate to so refer.

(5) In a case in which the Chief Executive determines that the matter is one which the Chief Executive is required to refer to the Commission under regulation 32 or is one which it would be appropriate to so refer, the Chief Executive must record the matter.

(6) In any other case, the Chief Executive must determine whether the matter is repetitious within the meaning of regulation 30.

(7) In a case where the Chief Executive determines that the matter is not repetitious within the meaning of regulation 30, the Chief Executive must record the matter.

(8) In any other case, the Chief Executive may (but need not) record the matter.

(9) In a case where the Chief Executive—

- (a) records a matter under this regulation; and
- (b) is not required to refer the matter to the Commission under regulation 32 and does not do so,

the Chief Executive may deal with the matter in such other manner (if any) as the Chief Executive may determine.

(10) Nothing in paragraph (5) or (7) requires the Chief Executive to record any conduct matter if the Chief Executive is satisfied that the matter has been, or is already being, dealt with by means of criminal or disciplinary proceedings against the person to whose conduct the matter relates.

(11) If it appears to the Commission that—

- (a) any matter that has come to its attention is a recordable conduct matter; but
- (b) the matter has not been recorded by the Chief Executive,

the Commission may direct the Chief Executive to record that matter; and the Chief Executive must comply with the direction.

Conduct matters not required to be recorded

30. For the purposes of regulations 28 and 29, a conduct matter is repetitious only if—

- (a) it concerns substantially the same conduct as a previous complaint or conduct matter;
- (b) there is no fresh indication in respect of that matter that a LAPO may have committed a criminal offence or behaved in a manner which would justify the bringing of disciplinary proceedings;
- (c) there is no fresh evidence in respect of that matter which was not reasonably available at the time the previous complaint was made or the previous conduct matter was recorded;
- (d) as respects the previous complaint or conduct matter, either—
 - (i) the complaint was resolved by local resolution in accordance with regulation 26;
 - (ii) the complaint was handled otherwise than in accordance with these Regulations or no action was taken in relation to it, in accordance with regulations 24 and 25 (disapplication of requirements of these Regulations);
 - (iii) the Commission gave the Chief Executive a direction under regulation 66 (power to discontinue an investigation);
 - (iv) the Chief Executive disapplied the requirements of these Regulations in accordance with regulation 66(18)(b);
 - (v) the complainant gave such notification as is mentioned in regulation 40(1) (withdrawn complaints); or
 - (vi) the requirements of regulations 69(9) or 70(11) (determination by the Chief Executive of what action to take) were complied with.

Duties to preserve evidence relating to conduct matters

31.—(1) Where the Chief Executive becomes aware of any recordable conduct matter, the Chief Executive must take all such steps as appear to be appropriate for the purposes of these Regulations for obtaining and preserving evidence relating to that matter.

(2) The Chief Executive's duty under paragraph (1) must be performed as soon as practicable after the Chief Executive becomes aware of the matter in question.

(3) After that, the Chief Executive must, until satisfied that it is no longer necessary to do so, continue to take the steps from time to time appearing to the Chief Executive to be appropriate for the purposes of these Regulations for obtaining and preserving evidence relating to the matter.

(4) The Chief Executive must take all such specific steps for obtaining or preserving evidence relating to any recordable conduct matter as the Chief Executive may be directed to take for the purposes of this regulation by the Commission.

Reference of conduct matters to the Commission

32.—(1) The Chief Executive must refer a recordable conduct matter to the Commission (whether or not the case falls within regulation 28 (conduct matters arising in civil proceedings)) if—

- (a) that matter relates to any incident or circumstances in or in consequence of which any person has died or suffered serious injury;
- (b) that matter is of a description specified in paragraph (2); or
- (c) the Commission notifies the Chief Executive that it requires that matter to be referred to it for its consideration.

(2) Any matter which relates to conduct falling within the following descriptions is specified for the purposes of paragraph (1)(b)—

- (a) a serious assault, as defined in guidance issued by the Commission;
- (b) a serious sexual offence, as defined in guidance issued by the Commission;
- (c) serious corruption, as defined in guidance issued by the Commission;
- (d) a criminal offence or behaviour which is liable to lead to disciplinary proceedings and which in either case was aggravated by discriminatory behaviour on the grounds of a person's race, sex, religion, or other status identified in guidance by the Commission;
- (e) a relevant offence; or
- (f) conduct which is alleged to have taken place in the same incident as one in which conduct within sub-paragraphs (a) to (e) is alleged.

(3) In a case where there is no obligation under paragraph (1) to make a reference, the Chief Executive may refer a recordable conduct matter to the Commission if the Chief Executive considers that it would be appropriate to do so by reason of—

- (a) the gravity of the matter; or
- (b) any exceptional circumstances.

(4) Where there is an obligation under paragraph (1) to refer a matter to the Commission, it must be referred in such manner as the Commission specifies and—

- (a) if the matter falls within paragraph (1)(a) or (b), without delay and in any event not later than the end of the day following the day on which it first becomes clear to the Chief Executive that the conduct matter is one to which that paragraph applies;
- (b) if the matter falls within paragraph (1)(c), without delay and in any event not later than the end of the day following the day on which the Commission notifies the Chief Executive that the conduct matter is to be referred.

(5) Subject to paragraph (7), the following powers—

- (a) the power of the Commission by virtue of paragraph (1)(c) to require a matter to be referred to it; and
- (b) the power of the Chief Executive to refer any matter to the Commission under paragraph 3,

are exercisable at any time irrespective of whether the matter is already being investigated by any person or has already been considered by the Commission.

(6) The Chief Executive must give a notification of the making of a reference under this regulation to the person to whose conduct the matter relates, unless the Chief Executive considers that to do so might prejudice a possible future investigation of the matter.

(7) A matter that has already been referred to the Commission under this regulation on a previous occasion—

- (a) is not required to be referred again under paragraph (1), unless the Commission so directs; and

(b) may only be referred in exercise of the power at paragraph (3) if the Commission consents.

Duties of the Commission on references under regulation 32

33.—(1) The Commission must, in the case of every recordable conduct matter referred to it by the Chief Executive under regulation 32, determine whether or not it is necessary for the matter to be investigated.

(2) Where the Commission determines under this regulation that it is not necessary for a recordable conduct matter referred by the Chief Executive to be investigated, it may if it thinks fit refer the matter back to the Chief Executive to be dealt with by the Chief Executive in such manner (if any) as the Chief Executive may determine.

(3) Where the Commission—

(a) refers a matter back to the Chief Executive under paragraph (2); and

(b) does not consider that to do so might prejudice a possible future investigation of that matter,

the Commission must give a notification of the making of the reference to the person to whose conduct that matter relates.