
STATUTORY INSTRUMENTS

2017 No. 521

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

PART 6

INVESTIGATIONS AND SUBSEQUENT PROCEEDINGS

Power of the Commission to determine the form of an investigation

38.—(1) This regulation applies where—

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

(2) The Commission must determine the form which the investigation should take.

(3) In making a determination under paragraph (2) the Commission must 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 Chief Executive on the Chief Executive's own behalf;
- (b) the Chief Executive under the supervision of the Commission;
- (c) the Chief Executive under the management of the Commission;
- (d) the Commission.

(5) The Commission 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 Chief Executive has already begun an investigation on the Chief Executive's own behalf, the Commission may give—

- (a) the Chief Executive; 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) A person to whom a direction is given under paragraph (6) must comply with it.

(8) The Commission must notify the Chief Executive of any determination that it makes under this regulation in relation to a particular complaint, recordable conduct matter or DSI matter.

Appointment of persons to carry out investigations

39.—(1) No person may be appointed to carry out an investigation under regulation 41, 42 or 43 (investigations by the Chief Executive on the Chief Executive's own behalf, supervised and managed investigations)—

- (a) unless that person has an appropriate level of knowledge, skills and experience to plan and manage the investigation;
- (b) if that person works, directly or indirectly, under the management of the person whose conduct is being investigated;
- (c) if that person's involvement in the role could reasonably give rise to a concern as to whether that person could act impartially under these Regulations.

Withdrawn complaints

40.—(1) If the Chief Executive 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,

the Chief Executive must as soon as possible 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 the following provisions of this regulation, these Regulations cease to apply in respect of that complaint.

(2) Where a complainant gives such notification as is mentioned in paragraph (1) to the Commission but, so far as is apparent to the Commission, has not sent that notification to the Chief Executive—

- (a) the Commission must send a copy of the notification to the Chief Executive;
- (b) the Chief Executive must 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 cease to apply in respect of that complaint.

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

- (a) which was referred to the Commission under regulation 21 and which has not been referred back to the Chief Executive under regulation 22; or
- (b) which the Chief Executive knows is currently the subject of an appeal to the Commission under regulation 20(3), 25(6), 27(1), 66(9) or 73(2),

the Chief Executive must notify the Commission that the Chief Executive 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)(a), the Commission must determine whether it is in the public interest for the complaint to be treated as a recordable conduct matter, and must notify the Chief Executive of its decision.

(5) In a case falling within paragraph (3)(b), the Chief Executive must—

- (a) determine whether it is in the public interest for the complaint to be treated as a recordable conduct matter; and

- (b) notify the Commission of the Chief Executive's determination and the reasons for that determination.

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

(7) Where a complainant gives such notification as is mentioned in paragraph (1) to the Chief Executive, or where the Chief Executive receives a copy of a notification under paragraph (2), and it relates to a complaint which does not fall within paragraph (3), the Chief Executive must determine whether it is in the public interest for the complaint to be treated as a recordable conduct matter and—

- (a) if the complaint is to be treated as a recordable conduct matter, the provisions of these Regulations apply to that matter;
- (b) if the complaint is not to be treated as a recordable conduct matter, the provisions of these Regulations cease to apply in respect of that complaint.

(8) In a case where—

- (a) a complaint has been subjected to an investigation by the Chief Executive on the Chief Executive's own behalf;
- (b) the complaint is currently subject to an appeal to the Commission under regulation 73; and
- (c) the Chief Executive has notified the Commission under paragraph (5)(b) that the Chief Executive has determined that the complaint is not to be treated as a recordable conduct matter,

the Commission must consider whether it is in the public interest for that determination to be reversed, and if so it must direct the Chief Executive to reverse the decision.

(9) Where a complainant indicates a 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 accordance with paragraph (1)—

- (a) in the case of an indication received by the Chief Executive, the Chief Executive must take the steps set out in paragraph (10);
- (b) in the case of an indication received by the Commission, the Commission must refer the matter to the Chief Executive who must take the steps set out in paragraph (10).

(10) Those steps are—

- (a) the Chief Executive must 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 indicates the wish for no further steps be taken in consequence of the complaint, or if the complainant fails to reply within a period of 28 days commencing on the day after the date of the written communication under sub-paragraph (a), the Chief Executive must 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 for further steps to be taken in consequence of the complaint, the Chief Executive must start or resume the investigation as the case may be.

(11) Subject to paragraph (12), the Chief Executive must notify the person complained against if—

- (a) the Chief Executive records the withdrawal of a complaint or the fact that the complainant does not wish any further steps to be taken;
- (b) the Chief Executive determines that a complaint is to be treated as a recordable conduct matter;

- (c) the Commission determines that a complaint is to be treated as a recordable conduct matter;
- (d) the Commission directs the Chief Executive 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) Nothing in paragraph (11) requires the Chief Executive to make a notification if the Chief Executive has previously decided under regulation 19 (copies of complaints etc.) not to supply to the person complained against a copy of the complaint.

Investigations by the Chief Executive on the Chief Executive's own behalf

41.—(1) This regulation applies if the Chief Executive is required by virtue of—

- (a) any determination made by the Chief Executive under regulation 23(3) (whether following the recording of a complaint or on a reference back under regulation 22(2)) or under regulation 26(10); or
- (b) any determination made by the Commission under regulation 38 (power of the Commission to determine the form of an investigation),

to make arrangements for a complaint, recordable conduct matter or DSI matter to be investigated by the Chief Executive on the Chief Executive's own behalf.

(2) This regulation also applies if—

- (a) a determination falls to be made by the Chief Executive under regulation 28(7), 29(9) or 33(2) in relation to any recordable conduct matter or under regulation 37(2) in relation to any DSI matter; and
- (b) the Chief Executive determines that it is necessary for the matter to be investigated by the Chief Executive on the Chief Executive's own behalf.

(3) The Chief Executive must—

- (a) appoint an officer of the Authority to investigate the complaint or matter; or
- (b) if the Chief Executive is of the opinion that having regard to regulation 39 (appointment of persons to carry out investigations) it is not possible to appoint an officer of the Authority to investigate the complaint or matter, make arrangements with a chief officer of police or the Director General of the National Crime Agency to have a person serving with the police or a National Crime Agency officer appointed to investigate the complaint or matter.

Investigations supervised by the Commission

42.—(1) This regulation applies where the Commission has determined that it should supervise the investigation by the Chief Executive of any complaint, recordable conduct matter or DSI matter.

(2) On being given notice of that determination, the Chief Executive must, if the Chief Executive has not already done so—

- (a) appoint an officer of the Authority to investigate the complaint or matter; or
- (b) if the Chief Executive is of the opinion that having regard to regulation 39 (appointment of persons to carry out investigations) it is not possible to appoint an officer of the Authority to investigate the complaint or matter, make arrangements with a chief officer of police or the Director General of the National Crime Agency to have a person serving with the police or a National Crime Agency officer appointed to investigate the complaint or matter.

(3) The Commission may require that no appointment is made under paragraph (2) unless it has given notice to the Chief Executive that it approves the person whom the Chief Executive 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 Commission is not satisfied with that person, the Commission may require the Chief Executive, 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 Commission of the person selected.

(5) Where a selection made in pursuance of a requirement under paragraph (4) has been notified to the Commission, the Chief Executive must appoint that person to investigate the complaint or matter if, but only if, the Commission notifies the Chief Executive that it approves the appointment of that person.

(6) Subject to paragraphs (7) and (8), the person appointed to investigate the complaint or matter must comply with any reasonable requirements as to the conduct of the investigation which may be imposed by the Commission as appear to it to be necessary.

(7) Where at any stage of an investigation of a complaint, recordable conduct matter or DSI matter the possibility of criminal proceedings arises, the Commission must not, under paragraph (6), impose any requirement relating to the obtaining or preservation of evidence of a criminal offence without first obtaining the consent of the Director of Public Prosecutions.

(8) The Commission must not, under paragraph (6), impose any requirement relating to the resources to be made available by the Chief Executive for the purposes of an investigation without first consulting the Chief Executive and having regard to any representations the Chief Executive may make.

Investigations managed by the Commission

43.—(1) This regulation applies where the Commission has determined that it should manage the investigation by the Chief Executive of any complaint, recordable conduct matter or DSI matter.

(2) Paragraphs (2) to (5) of regulation 42 (investigations supervised by the Commission) apply as they apply in the case of an investigation which the Commission has determined is one that it should supervise.

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

Investigations by the Commission itself

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

(2) The Commission must designate both—

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

(3) A member of the Commission'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 have all the powers and privileges of a constable throughout England and Wales and the adjacent United Kingdom waters,

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

(4) A member of the Commission's staff who is not a constable is not, as a result of paragraph (3), to 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⁽¹⁾; or
- (b) section 200 (police officers) of the Employment Rights Act 1996⁽²⁾.

(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) 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 regulation).

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

Investigations by the Commission: power to serve an information notice

45.—(1) The Commission may serve upon any person an information notice requiring the person to provide it with information that it reasonably requires for the purposes of an investigation in accordance with regulation 44.

(2) But an information notice must not require a person—

- (a) to provide information that might incriminate the person;
- (b) to provide an item subject to legal privilege within the meaning of the Police and Criminal Evidence Act 1984 (see section 10 of that Act);
- (c) to make a disclosure that would be prohibited by any of Part 1 of the Regulation of Investigatory Powers Act 2000 or Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016;
- (d) to provide information that was provided to the person by, or by an agency of, the government of a country or territory outside the United Kingdom where that government does not consent to the disclosure of the information.

(3) Neither must an information notice require a postal or telecommunications operator to provide communications data.

(4) In paragraph (3) "communications data", "postal operator" and "telecommunications operator" have the same meanings as in the Investigatory Powers Act 2016 (see sections 261 and 262 of that Act).

(5) An information notice must—

- (a) specify or describe the information that is required by the Commission and the form in which it must be provided;
- (b) specify the period within which the information must be provided;
- (c) give details of the right of appeal against the information notice under regulation 47.

(6) The period specified under paragraph (5)(b) must not end before the end of the period within which an appeal can be brought against the notice and, if such an appeal is brought, the information need not be provided pending the determination or withdrawal of the appeal.

(1) 1992 c. 52.

(2) 1996 c. 18.

(7) The Commission may cancel an information notice by written notice to the person on whom it was served.

Failure to comply with an information notice

46.—(1) If a person who has received an information notice—

- (a) fails or refuses to provide information required by the notice; or
- (b) knowingly or recklessly provides information in response to the notice that is false in a material respect,

the Commission may certify in writing to the High Court that the person has failed to comply with the information notice.

(2) The High Court may then inquire into the matter and, after hearing any witness who may be produced against or on behalf of the person, and after hearing any statement offered in defence, deal with the person as if the person had committed a contempt of court.

Appeals against information notices

47.—(1) A person on whom an information notice is served may appeal against the notice to the First-tier Tribunal on the ground that the notice is not in accordance with the law.

(2) If the Tribunal considers that the notice is not in accordance with the law—

- (a) it must quash the notice; and
- (b) it may give directions to the Commission in relation to the service of a further information notice.

Sensitive information: restriction on further disclosure

48.—(1) Where the Commission receives information within paragraph (2) under an information notice, it must not disclose (whether under regulation 7, 13 or 14 or otherwise) the information, or the fact that it has received it, unless the relevant authority consents to the disclosure.

(2) The information is—

- (a) intelligence service information;
- (b) protected information relating to a relevant warrant; or
- (c) information obtained (directly or indirectly) from a government department which, at the time it is provided to the Commission, is identified by the department as information the disclosure of which may, in the opinion of the relevant authority, cause damage to—
 - (i) national security or international relations; or
 - (ii) the economic interests of the United Kingdom or any part of the United Kingdom.

(3) Where the Commission discloses to another person information within paragraph (2), or the fact that it has received it, that person must not disclose that information or that fact unless the relevant authority consents to the disclosure.

(4) In this regulation—

“government department” means a department of Her Majesty’s Government but does not include—

- (a) the Security Service;
- (b) the Secret Intelligence Service; or
- (c) the Government Communications Headquarters (“GCHQ”);

“intelligence service information” means information which was obtained (directly or indirectly) from an intelligence service or which related to an intelligence service;

“intelligence service” means—

- (a) the Security Service;
- (b) the Secret Intelligence Service;
- (c) GCHQ; or
- (d) any part of Her Majesty’s forces (within the meaning of the Armed Forces Act 2006⁽³⁾), or of the Ministry of Defence, which engages in intelligence activities;

“Minister of the Crown” includes the Treasury;

“protected information”, in relation to a relevant warrant, means information relating to any of the matters mentioned in section 57(4) of the Investigatory Powers Act 2016 in relation to the warrant;

“relevant authority” means—

- (a) in the case of intelligence service information obtained from the Security Service, the Director-General of the Security Service;
- (b) in the case of intelligence service information obtained from the Secret Intelligence Service, the Chief of the Secret Intelligence Service;
- (c) in the case of intelligence service information obtained from GCHQ, the Director of GCHQ;
- (d) in the case of intelligence service information obtained from any part of Her Majesty’s forces, or of the Ministry of Defence, which engages in intelligence activities, the Secretary of State;
- (e) in the case of protected information relating to a relevant warrant, the person to whom the warrant is or was addressed;
- (f) in the case of information within paragraph (2)(c)—
 - (i) the Secretary of State; or
 - (ii) the Minister of the Crown in charge of the government department from which the information was obtained (if that Minister is not a Secretary of State);

“relevant warrant” means—

- (a) a warrant under Chapter 1 of Part 2 of the Investigatory Powers Act 2016; or
- (b) a warrant under Chapter 1 of Part 6 of that Act.

Combining and splitting investigations

49.—(1) The Chief Executive may, where carrying out an investigation on the Chief Executive’s own behalf—

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

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

(2) Where the Commission 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,

(3) 2006 c. 52.

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

(3) The Commission must consult the Chief Executive before taking any action under paragraph (2) in relation to a supervised or managed investigation.

(4) Nothing in this regulation prevents the Commission from determining that—

- (a) where an investigation is split into two or more separate investigations, those investigations may take different forms;
- (b) two or more separate investigations which take different forms (including an investigation being carried out by the Chief Executive on the Chief Executive's own behalf) may be combined into a single investigation.

Relinquishing the Commission's supervision or management of an investigation

50.—(1) This regulation applies where the Commission relinquishes—

- (a) the management of an investigation in favour of a supervised investigation or an investigation by the Chief Executive on the Chief Executive's own behalf; or
- (b) the supervision of an investigation in favour of an investigation by the Chief Executive on the Chief Executive's own behalf.

(2) Where this regulation applies, and subject to paragraph (3), the Commission must—

- (a) notify the Chief Executive, the complainant, any interested person within the meaning of regulation 14 (duty to provide information for other persons) and the person complained against of its decision, and the reasons for that decision; and
- (b) send to the Chief Executive any documentation and evidence gathered during its investigations as will assist the Chief Executive to carry out the Chief Executive's functions under these Regulations.

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

Circumstances in which an investigation or other procedure may be suspended

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

(2) The Chief Executive may, subject to paragraph (3), suspend—

- (a) an investigation by the Chief Executive on the Chief Executive's own behalf;
- (b) an investigation under the supervision of the Commission; or
- (c) any other procedure under these Regulations,

which would, if it were to continue, prejudice any criminal investigation or proceedings.

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

(4) The Commission must consult the Chief Executive before making such a direction.

Resumption of investigation after criminal proceedings

52.—(1) Where the investigation of a conduct matter or DSI matter has been suspended until the conclusion of criminal proceedings, the Commission or Chief Executive, as the case may be, must start or resume the investigation after the conclusion of those proceedings.

(2) Where the investigation of a complaint has been suspended until the conclusion of criminal proceedings, and the complainant has not indicated after the conclusion of those proceedings the wish that the investigation start or be resumed, the Commission or Chief Executive, as the case may be, must take the steps set out in paragraph (3).

(3) The Commission or Chief Executive must take all reasonable steps to contact the complainant to ascertain whether the complainant wants the investigation to start or be resumed.

(4) If the complainant indicates the wish for the investigation to start or be resumed, the Commission or Chief Executive must start or resume the investigation.

(5) If—

(a) the complainant indicates the wish that the investigation not be started or not be resumed, or

(b) the complainant fails to reply within a period of 28 days commencing on the day after the date of a letter sent to the complainant by the Commission or Chief Executive,

the Commission or Chief Executive, as the case may be, must determine whether it is in the public interest for the complaint to be treated as a recordable conduct matter.

(6) If the Commission or Chief Executive 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 cease to apply to the complaint.

(7) If the Commission or Chief Executive determines that it is in the public interest for the complaint to be treated as a recordable conduct matter, the provisions of these Regulations continue to apply to the matter.

(8) Subject to paragraph (9), the Commission or Chief Executive must notify the person complained against if paragraph (6) or (7) applies.

(9) Nothing in paragraph (8) requires the Commission or Chief Executive to make a notification if the Commission or the Chief Executive, as the case may be, is of the opinion that that might prejudice any criminal investigation or proceedings or would be contrary to the public interest.

Special procedure: assessment of seriousness of conduct under investigation

53.—(1) If, during the course of an investigation of a complaint, it appears to the person investigating that there is an indication that a person to whose conduct the investigation relates may have—

(a) committed a criminal offence; or

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

the person investigating must certify the investigation as one subject to special requirements.

(2) If the person investigating a complaint certifies the investigation as one subject to special requirements, the person must, as soon as is reasonably practicable after doing so, make a severity assessment in relation to the conduct of the person concerned to which the investigation relates.

(3) The person investigating a recordable conduct matter must make a severity assessment in relation to the conduct to which the investigation relates—

(a) as soon as is reasonably practicable after that person's appointment or designation; or

(b) in the case of a matter recorded in accordance with regulations 67(5) or 72(2), as soon as is reasonably practicable after it is so recorded.

(4) For the purposes of this regulation a “severity assessment”, in relation to conduct, means an assessment as to whether the conduct, if proved, would amount to misconduct or gross misconduct.

(5) An assessment under this regulation may only be made after consultation with the Chief Executive.

(6) On completing an assessment under this regulation, the person investigating the complaint or matter must give a notification to the person concerned that complies with paragraph (7).

(7) The notification must be in writing and state—

- (a) the conduct that is the subject matter of the allegation and how that conduct is alleged to fall below the Authority's standards;
- (b) that there is an investigation into the matter and the identity of the person investigating;
- (c) the assessment of the person investigating as to whether that conduct, if proved, would amount to misconduct or gross misconduct;
- (d) that the person concerned has the right to seek advice from the trade union or any other body representing the interests of the person concerned and of the effect of regulation 57 (LAPO friend); and
- (e) the effect of paragraph (8) and regulation 54 (duty to consider submissions from person whose conduct is being investigated).

(8) The person concerned or the person's LAPO friend has such a period as determined by the Chief Executive, starting with the day after which the notice is given under paragraph (7) (unless this period is extended by the person investigating), to provide any relevant statement or relevant document as the case may be.

(9) Paragraph (6) does not apply for so long as the person investigating the complaint or matter considers that giving the notification might prejudice—

- (a) the investigation; or
- (b) any other investigation (including, in particular, a criminal investigation).

(10) Where the person investigating a complaint or matter has made a severity assessment and considers it appropriate to do so, the person may revise the assessment.

(11) On revising a severity assessment, the person investigating the complaint or matter must, as soon as practicable, give the person concerned further written notice of the assessment of whether the conduct, if proved, would amount to misconduct or gross misconduct, as the case may be, and the reason for that assessment.

(12) The notice, whether given in accordance with paragraph (6) or (11), must be—

- (a) given to the person concerned in person;
- (b) left with some person at, or sent by recorded delivery to, the last known address of the person concerned; or
- (c) given to the person concerned in person by that person's LAPO friend where the LAPO friend has agreed with the Chief Executive to deliver the notice.

(13) In this regulation and regulations 54 to 57—

“the person concerned” means—

- (a) in relation to an investigation of a complaint, the LAPO in respect of whom it appears to the person investigating that there is the indication mentioned in paragraph (1);
- (b) in relation to an investigation of a recordable conduct matter, the LAPO to whose conduct the investigation relates;

“relevant document” means a document relating to a complaint or matter under investigation and includes such a document containing suggestions as to lines of inquiry to be pursued or witnesses to be interviewed;

“relevant statement” means an oral or written statement relating to a complaint or matter under investigation.

Duty to consider submissions from the person whose conduct is being investigated

54.—(1) This regulation applies to—

- (a) an investigation of a complaint that has been certified under regulation 53(1) as one subject to special requirements; or
- (b) an investigation of a recordable conduct matter.

(2) If before the expiry of the period determined by the Chief Executive under regulation 53(8)—

- (a) the person concerned provides the person investigating the complaint or matter with a relevant statement or a relevant document; or
- (b) a LAPO friend provides that person with a relevant document,

that person must consider the statement or document.

Interview of the person whose conduct is being investigated

55.—(1) This regulation applies to an investigation to which regulation 54 applies.

(2) Where the person investigating wishes to interview the person concerned as part of the investigation, the person investigating must, if reasonably practicable, agree a date and time for the interview with the person concerned.

(3) Where no date and time is agreed under paragraph (2), the person investigating must specify a date and time for the interview.

(4) Where a date and time is specified under paragraph (3) and—

- (a) the person concerned or that person's LAPO friend will not be available at that time; and
- (b) the person concerned proposes an alternative time which satisfies paragraph (5),

the interview is postponed to the time proposed by the person concerned.

(5) An alternative time must—

- (a) be reasonable; and
- (b) fall before the end of the period of 5 working days beginning with the first working day after the day specified by the person investigating.

(6) The person concerned must be given written notice of the date, time and place of the interview.

(7) The person investigating must, in advance of the interview, provide the person concerned with such information as the person investigating considers appropriate in the circumstances of the case to enable the person concerned to prepare for the interview.

(8) The person concerned must attend the interview.

(9) A LAPO friend may not answer any questions asked of the person concerned during the interview.

Duty to provide certain information to the Chief Executive

56.—(1) This regulation applies during the course of an investigation to which regulation 54 applies.

(2) The person investigating the complaint or matter must supply the Chief Executive with such information in that person's possession as the Chief Executive may reasonably request for the purpose mentioned in paragraph (3).

(3) That purpose is determining whether—

- (a) the person concerned should be, or should remain, suspended from that person's appointment as an officer of the Authority; or

- (b) in relation to a person who has been seconded to the Authority to serve as an officer of the Authority, the secondment of the person concerned should cease to have effect, or continue to cease to have effect.

LAPO friend

57.—(1) The person concerned may choose—

- (a) an officer of the Authority; or
- (b) an official of a trade union,

who is not otherwise involved in the matter to act as that person's LAPO friend.

(2) A LAPO friend may—

- (a) provide any relevant document to the person investigating in accordance with regulation 54(2)(b);
- (b) accompany the person concerned to any interview conducted under regulation 55;
- (c) advise the person concerned throughout proceedings under these Regulations; and
- (d) make representations to the Commission concerning any aspect of the proceedings under these Regulations.

Interview of an officer of the Authority during certain investigations

58.—(1) This regulation applies to an investigation of a complaint, recordable conduct matter or DSI matter which—

- (a) is carried out by the Chief Executive under the management of the Commission; or
- (b) is carried out by the Commission itself.

(2) Paragraph (3) prescribes the procedure to be followed in connection with an interview which—

- (a) is held with an officer of the Authority during the course of the investigation by the person investigating the complaint or matter; and
- (b) is not within regulation 55.

(3) Where the person investigating wishes to interview an officer of the Authority as part of an investigation, the person investigating must—

- (a) give written notice to that officer that the interview will take place in accordance with this regulation; and
- (b) if reasonably practicable, agree a date and time for the interview.

(4) Where no date and time is agreed under paragraph (3), the person investigating must specify a date and time for the interview.

(5) Where a date and time is specified under paragraph (4) and—

- (a) the relevant officer or the relevant officer's accompanying person will not be available at that time; and
- (b) the relevant officer proposes an alternative time which satisfies paragraph (6),

the interview is postponed to the time proposed by the relevant officer.

(6) An alternative time must—

- (a) be reasonable; and
- (b) fall before the end of the period of 5 working days beginning with the first working day after the day specified by the relevant investigator.

- (7) The relevant officer must be given written notice of the date, time and place of the interview.
- (8) The person investigating must, in advance of the interview, provide the relevant officer with such information as the person investigating considers appropriate in the circumstances of the case to enable the relevant officer to prepare for the interview.
- (9) The relevant officer must attend the interview.
- (10) An accompanying person may not answer any questions asked of the relevant officer during the interview.
- (11) Where an accompanying person is an officer of the Authority, the Chief Executive must permit the accompanying person to use a reasonable amount of duty time for the purposes of this regulation.
- (12) Nothing in this regulation applies to an interview of any person—
- (a) in relation to an investigation of a complaint, in respect of whom it appears to the investigator that there is a relevant indication; or
 - (b) in relation to an investigation of a recordable conduct matter, to whose conduct the investigation relates.
- (13) Nothing in this regulation prevents or restricts the holding of interviews to which this regulation does not apply during the course of any investigation under these Regulations.
- (14) In this regulation—
- “accompanying person” means any person nominated by the relevant officer and who is not otherwise involved in the matter;
 - “relevant indication” means an indication that a person to whose conduct the investigation relates may have—
 - (a) committed a criminal offence; or
 - (b) behaved in a manner which would justify the bringing of disciplinary proceedings;
 - “relevant officer” means an officer of the Authority given notice under paragraph (3)(a).

Restrictions on proceedings pending the conclusion of an investigation

59.—(1) No criminal or disciplinary proceedings may be brought in relation to any matter which is the subject of an investigation in accordance with the provisions of these Regulations until—

- (a) the Chief Executive has certified the case as a special case under regulation 61(3) or 63(3); or
- (b) a report on that investigation has been submitted to the Commission or to the Chief Executive under regulation 68 (final reports on investigations: complaints and conduct matters) or 71 (final reports on investigations: DSI matters).

(2) Nothing in this regulation prevents 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 relate to that conduct.

(3) The restrictions imposed by this regulation in relation to the bringing of criminal proceedings do not apply to the bringing of criminal proceedings by the Director of Public Prosecutions in any case in which it appears to the Director that there are exceptional circumstances which make it undesirable to delay the bringing of such proceedings.

Accelerated procedure in special cases

60.—(1) If, at any time before the completion of the investigation, the person investigating a complaint or recordable conduct matter believes that the Chief Executive would, on consideration

of the matter, be likely to consider that the special conditions are satisfied, the person must proceed in accordance with the following provisions of this paragraph.

(2) If the person was appointed under regulation 41 (investigations by the Chief Executive on the Chief Executive's own behalf), the person must submit to the Chief Executive—

- (a) a statement of that person's belief and the grounds for it; and
- (b) a written report on the investigation to that point,

and if the person was appointed following a determination made by the Commission under regulation 36 the person must send a copy of the statement and the report to the Commission.

(3) If the person was appointed under regulation 42 or 43 (investigations supervised or managed by the Commission) or designated under regulation 44 (investigations by the Commission itself), the person must submit to the Chief Executive—

- (a) a statement of that person's belief and the grounds for it; and
- (b) a written report on the investigation to that point,

and must send a copy of the statement and the report to the Commission.

(4) A person submitting a report under this regulation is not 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.

(5) A statement and report may be submitted under this regulation whether or not a previous statement and report have been submitted, but a second or subsequent statement and report may be submitted only if the person submitting them has grounds to believe that the Chief Executive will reach a different determination under regulation 61(2) or 63(2).

(6) After submitting a report under this regulation, the person investigating the complaint or recordable conduct matter must continue the investigation to such extent as that person considers appropriate.

(7) The special conditions are that—

- (a) there is sufficient evidence, in the form of written statements or other documents, to establish on the balance of probabilities that conduct to which the investigation relates constitutes gross misconduct; and
- (b) it is in the public interest for the person whose conduct it is to cease to be a LAPO without delay.

(8) In regulations 61 to 64—

- (a) "special report" means a report submitted under this regulation; and
- (b) "special conditions" has the meaning given by paragraph (7) of this regulation.

Special cases: investigations managed or carried out by the Commission: action by the Chief Executive

61.—(1) This regulation applies where—

- (a) a statement and special report on an investigation carried out under the management of the Commission; or
- (b) a statement and special report on an investigation carried out by a person designated by the Commission,

are submitted to the Chief Executive under regulation 60(3).

(2) The Chief Executive must determine whether the special conditions are satisfied.

(3) If the Chief Executive determines that the special conditions are satisfied, the Chief Executive must—

- (a) certify the case as a special case for the purposes of procedures for the taking of disciplinary proceedings; and
 - (b) take such steps as are required by those procedures in relation to a case so certified,
- unless the Chief Executive considers that the circumstances are such as to make it inappropriate to do so.
- (4) The Chief Executive must notify the Commission of a certification under paragraph (3).
 - (5) If the Chief Executive determines—
 - (a) that the special conditions are not satisfied; or
 - (b) that, although those conditions are satisfied, the circumstances are such as to make it inappropriate at present to bring disciplinary proceedings,
 the Chief Executive must submit to the Commission a memorandum under this paragraph.
 - (6) The memorandum required to be submitted under paragraph (5) is one which—
 - (a) notifies the Commission of the Chief Executive's determination that those conditions are not satisfied or, as the case may be, that they are so satisfied but the circumstances are such as to make it inappropriate at present to bring disciplinary proceedings; and
 - (b) (in either case) sets out the Chief Executive's reasons for so determining.

Special cases: investigations managed or carried out by the Commission: action by the Commission

- 62.**—(1) On receipt of a notification under regulation 61(4), the Commission must 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 14; 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.
- (2) The notification required by paragraph (1) is one setting out—
- (a) the findings of the special report;
 - (b) the Chief Executive's determination under regulation 61(2); and
 - (c) the action that the Chief Executive is required to take as a consequence of that determination.
- (3) Regulation 16 (exceptions to the duty to keep the complainant informed and to provide information for other persons) has effect in relation to the duties imposed on the Commission by paragraph (1) as it has effect in relation to the duties imposed on the Commission by regulations 13 and 14.
- (4) Except so far as may be otherwise prohibited by regulation 16, the Commission is 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 (1) notification of the findings of the special report by sending that person a copy of that report.
- (5) On receipt of a memorandum under regulation 61(5), the Commission must—
- (a) consider the memorandum;
 - (b) determine, in the light of that consideration, whether or not to make a recommendation under regulation 64; and
 - (c) if it thinks fit to do so, make a recommendation under that regulation.

(6) If the Commission determines not to make a recommendation under regulation 64, it must notify the Chief Executive and the person investigating the complaint or matter of its determination.

Special cases: other investigations: action by the Chief Executive

63.—(1) This paragraph applies where—

- (a) a statement and a special report on an investigation carried out by the Chief Executive on the Chief Executive's own behalf; or
- (b) a statement and a special report on an investigation carried out under the supervision of the Commission,

are submitted to the Chief Executive under regulation 60(2) or (3).

(2) The Chief Executive must determine whether the special conditions are satisfied.

(3) If the Chief Executive determines that the special conditions are satisfied, the Chief Executive must—

- (a) certify the case as a special case for the purposes of procedures for the taking of disciplinary proceedings; and
- (b) take such steps as are required by those procedures in relation to a case so certified,

unless the Chief Executive considers that the circumstances are such as to make it inappropriate to do so.

(4) Where—

- (a) the statement and report were required under regulation 60(2) to be copied to the Commission; or
- (b) the statement and report were submitted under regulation 60(3),

the Chief Executive must notify the Commission of a certification under paragraph (3).

(5) If the Chief Executive determines—

- (a) that the special conditions are not satisfied; or
- (b) that, although those conditions are satisfied, the circumstances are such as to make it inappropriate at present to bring disciplinary proceedings,

the Chief Executive must notify the person investigating the complaint or matter of the Chief Executive's determination.

(6) If the Chief Executive certifies a case under paragraph (3), the Chief Executive must 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 14; 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.

(7) The notification required by paragraph (6) is one setting out—

- (a) the findings of the report;
- (b) the Chief Executive's determination under paragraph (2); and
- (c) the action that the Chief Executive is required to take in consequence of that determination.

(8) Regulation 16 (exceptions to the duty to keep the complainant informed and to provide information for other persons) has effect in relation to the duties imposed on the Chief Executive by paragraph (6) as it has effect in relation to the duties imposed on the Chief Executive by regulations 13 and 14.

(9) Except so far as may be otherwise prohibited by regulation 16, the Chief Executive is 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 (6) notification of the findings of the special report by sending that person a copy of that report.

Special cases: recommendation or direction of the Commission

64.—(1) Where the Chief Executive has submitted, or is required to submit, a memorandum to the Commission under regulation 61(5), the Commission may make a recommendation to the Chief Executive that the Chief Executive should certify the case under regulation 61(3).

(2) If the Commission determines to make a recommendation under this regulation, it must 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 14; 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.
- (3) The notification required by paragraph (2) is one setting out—
- (a) the findings of the special report; and
 - (b) the Commission's recommendation under this regulation.

(4) Regulation 16 (exceptions to the duty to keep the complainant informed and to provide information for other persons) has effect in relation to the duties imposed on the Commission by paragraph (2) as it has effect in relation to the duties imposed on the Commission by regulations 13 and 14.

(5) Except so far as may be otherwise prohibited by regulation 16, the Commission is 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 (2) notification of the findings of the special report by sending that person a copy of the report.

- (6) The Chief Executive must—
- (a) notify the Commission whether the Chief Executive accepts the recommendation; and
 - (b) if the Chief Executive does, certify the case and proceed accordingly.

(7) If, after the Commission has made a recommendation under this regulation, the Chief Executive does not certify the case under regulation 61(3)—

- (a) the Commission may direct the Chief Executive so to certify it; and
- (b) the Chief Executive must comply with any such direction and proceed accordingly.

(8) Where the Commission gives the Chief Executive a direction under this regulation, it must supply the Chief Executive with a statement of its reasons for doing so.

(9) The Commission may at any time withdraw a direction given under this regulation.

(10) The Chief Executive must keep the Commission informed of whatever action the Chief Executive takes in response to a recommendation or direction.

(11) Where—

- (a) the Commission makes a recommendation under this regulation in the case of an investigation of a complaint; and
 - (b) the Chief Executive notifies the Commission that the recommendation has been accepted,
- the Commission must notify the complainant and every person entitled to be kept properly informed in relation to the complaint under regulation 14 of that fact and of the steps that have been, or are to be, taken by the Chief Executive to give effect to it.

- (12) Where in the case of an investigation of a complaint the Chief Executive—
- (a) notifies the Commission that the Chief Executive does not accept the recommendation made by the Commission under this regulation; or
 - (b) fails to certify the case under regulation 61(3) and to proceed accordingly,
- the Commission must determine what (if any) further steps to take under this regulation.
- (13) The Commission must notify the complainant and every person entitled to be kept properly informed in relation to the complaint under regulation 14—
- (a) of any determination under paragraph (12) not to take further steps under this regulation; and
 - (b) where it determines under that paragraph to take further steps under that paragraph, of the outcome of the taking of those steps.

Power to discontinue an investigation

65.—(1) The Commission may by order require the discontinuance of the investigation of a complaint or matter if (whether on the application of the Chief Executive or otherwise) it appears to the Commission that—

- (a) the complaint or matter is of a description specified in paragraph (9); and
 - (b) discontinuance of the investigation is within the Commission's power.
- (2) The Chief Executive may discontinue an investigation if it appears to the Chief Executive that—
- (a) the complaint or matter is of a description specified in paragraph (9); and
 - (b) discontinuance of the investigation is not within the Commission's power.
- (3) Before discontinuing an investigation or applying to the Commission for an order requiring the discontinuance of an investigation, the Chief Executive must—
- (a) write to the complainant at the complainant's last known address—
 - (i) inviting the complainant to make representations in relation to the matter; and
 - (ii) allowing the complainant a period of 28 days, commencing on the day after the date of the letter, to do so; and
 - (b) have regard to any representations made by the complainant.
- (4) Any application by the Chief Executive to the Commission for an order requiring the discontinuance of an investigation must be in writing and must be accompanied by—
- (a) a copy of the complaint; and
 - (b) a memorandum from the Chief Executive containing a summary of the investigation undertaken so far and explaining the reasons for the application.
- (5) The Chief Executive must—
- (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 Commission; and
 - (b) supply any further information requested by the Commission for the purpose of considering that application.
- (6) The Commission must not require the discontinuance of an investigation in a case where there has been no application to do so by the Chief Executive unless it has consulted with the Chief Executive.
- (7) Before requiring the discontinuance of an investigation under paragraph (1) in a case where there has been no application to do so by the Chief Executive, the Commission must—

- (a) write to the complainant at the complainant's last known address—
 - (i) inviting the complainant to make representations in relation to the matter; and
 - (ii) allowing the complainant a period of 28 days, commencing on the day after the date of the letter, to do so; and
- (b) have regard to any representations made by the complainant.
- (8) For the purposes of this regulation—
 - (a) discontinuance of the investigation of a complaint is within the Commission's power if
 - (i) the investigation is being undertaken by the Chief Executive on the Chief Executive's own behalf and the complaint is one required to be referred to the Commission under regulation 21; or
 - (ii) the investigation is under the supervision or management of the Commission;
 - (b) discontinuance of the investigation of a matter other than a complaint is within the Commission's power if the investigation is under the supervision or management of the Commission.
- (9) For the purposes of paragraphs (1) and (2), a complaint or matter is of a description specified in this paragraph if it is one—
 - (a) in which the complainant refuses to co-operate to the extent that the relevant body considers that it is not reasonably practicable to continue the investigation;
 - (b) which the Chief Executive has determined is suitable for local resolution;
 - (c) which the relevant body considers is vexatious, oppressive or otherwise an abuse of the procedures for dealing with complaints, conduct matters or DSI matters;
 - (d) which is repetitious, as defined in regulation 24(8) or 30; or
 - (e) which the relevant body otherwise considers is such as to make it not reasonably practicable to proceed with the investigation.
- (10) For the purposes of paragraph (9) "relevant body" means—
 - (a) the Commission, in a case where discontinuance is within the Commission's power in accordance with paragraph (8); and
 - (b) the Chief Executive, in any other case.

Discontinuance of an investigation: notifications, appeals etc.

66.—(1) The Commission must not discontinue an investigation that is being carried out in accordance with regulation 44 (investigations by the Commission itself) except in a cases where the complaint, conduct matter or DSI matter under investigation is of a description specified in regulation 65(9).

(2) Where the Commission makes an order under regulation 65(1) or discontinues an investigation being carried out in accordance with regulation 44, it must give notification of the discontinuance—

- (a) to the Chief Executive;
- (b) to every person entitled to be kept properly informed in relation to the subject matter of the investigation under regulation 14; and
- (c) in a case where the investigation that is discontinued is an investigation of a complaint, to the complainant.

(3) Where the Chief Executive discontinues an investigation under regulation 65(2), the Chief Executive must give notification of the discontinuance—

- (a) to every person entitled to be kept properly informed in relation to the subject matter of the investigation under regulation 14; and
 - (b) in a case where the investigation that is discontinued is an investigation of a complaint, to the complainant.
- (4) Where an investigation of a complaint, recordable conduct matter or DSI matter is discontinued in accordance with an order under regulation 65(1)—
 - (a) the Commission may give the Chief Executive directions in accordance with paragraph (5); and
 - (b) the Commission may itself take any such steps of a description specified in paragraph (8) (with the exception of the step in paragraph (8)(c)) as it considers appropriate for purposes connected with the discontinuance of the investigation,but otherwise neither the Chief Executive nor the Commission may take any further action in accordance with the provisions of these Regulations in relation to that complaint or matter.
- (5) A direction given to the Chief Executive by the Commission under paragraph (4)(a) may—
 - (a) require the Chief Executive to produce an investigation report on the discontinued investigation under regulation 68 and to take any subsequent steps under these Regulations;
 - (b) where the investigation concerned a complaint, require the Chief Executive to disapply the requirements of these Regulations as respects that complaint;
 - (c) in a case within regulation 65(9)(b), require the Chief Executive to subject the complaint to local resolution;
 - (d) direct the Chief Executive to handle the matter in whatever manner (if any) the Chief Executive thinks fit.
- (6) The Chief Executive must comply with any directions given under paragraph (5).
- (7) Where an investigation of a complaint, recordable conduct matter or DSI matter is discontinued in accordance with regulation 65(2)—
 - (a) the Chief Executive may take any such steps of a description specified in paragraph (8) as the Chief Executive considers appropriate for purposes connected with the discontinuance of the investigation; but
 - (b) otherwise neither the Chief Executive nor the Commission may take any further action in accordance with the provisions of these Regulations in relation to that complaint or matter.
- (8) For the purposes of paragraphs (4)(b) and (7)(a), the steps are—
 - (a) to produce an investigation report on the discontinued investigation and take any subsequent steps under these Regulations;
 - (b) where the investigation concerned a complaint, to disapply the requirements of these Regulations as respects that complaint;
 - (c) to subject the complaint to local resolution;
 - (d) to handle the matter in whatever manner the Chief Executive or (as the case may be) the Commission thinks fit.
- (9) The complainant may appeal to the Commission against any decision by the Chief Executive under regulation 65(2) to discontinue the investigation of the complaint.
- (10) On an appeal under this regulation, the Commission must—
 - (a) determine whether any decision taken by the Chief Executive under regulation 65 or this regulation should have been taken in the case in question; and

- (b) if the Commission finds in the complainant's favour, give such directions as it thinks appropriate to the Chief Executive as to the action to be taken for investigating the complaint;

and the Chief Executive must comply with any such directions.

Procedure where a conduct matter is revealed during investigation of a DSI matter

67.—(1) If during the course of an investigation of a DSI matter it appears to a person appointed under regulation 43 (investigations managed by the Commission) or designated under regulation 44 (investigations by the Commission itself) that there is an indication that a LAPO may have—

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

the appointed or designated person must make a submission to that effect to the Commission.

(2) If, after considering a submission under paragraph (1), the Commission determines that there is such an indication, it must—

- (a) notify the Chief Executive of that determination; and
- (b) send to the Chief Executive a copy of the submission under paragraph (1).

(3) If during the course of an investigation of a DSI matter it appears to a person appointed under regulation 39 (investigations by the Chief Executive on the Chief Executive's own behalf) or 40 (investigations supervised by the Commission) that there is an indication that a LAPO may have—

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

the appointed person must make a submission to that effect to the Chief Executive.

(4) If, after considering a submission under paragraph (3), the Chief Executive determines that there is such an indication, the Chief Executive must—

- (a) notify the Commission of that determination; and
- (b) send to it a copy of the submission under paragraph (3).

(5) Where the Chief Executive—

- (a) is notified of a determination by the Commission under paragraph (2); or
- (b) makes a determination under paragraph (4),

the Chief Executive must record the matter under regulation 29 as a conduct matter.

(6) Where a DSI matter is recorded under regulation 29 as a conduct matter by virtue of paragraph (5)—

- (a) the person investigating the DSI matter must (subject to any determination made by the Commission under regulation 38(5)) continue the investigation as if appointed or designated to investigate the conduct matter; and
- (b) the other provisions of these Regulations apply in relation to that matter accordingly.