
STATUTORY INSTRUMENTS

2017 No. 521

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

PART 7

REPORTS AND RECOMMENDATIONS

Appeals with respect to an investigation

- 73.**—(1) This regulation applies where a complaint has been subjected to—
- (a) an investigation by the Chief Executive on the Chief Executive’s own behalf; or
 - (b) an investigation under the supervision of the Commission.
- (2) The complainant may appeal to the Commission—
- (a) on the grounds that the complainant has not been provided with adequate information—
 - (i) about the findings of the investigation;
 - (ii) about any determination of the Chief Executive relating to the taking (or not taking) of action in respect of any matters dealt with in the report on the investigation;
 - (b) against the findings of the investigation;
 - (c) against any determination by the Chief Executive that a person to whose conduct the investigation related has a case to answer, or has no case to answer, in respect of misconduct or gross misconduct or that such a person’s performance is, or is not, unsatisfactory;
 - (d) against any determination by the Chief Executive relating to the taking (or not taking) of action in respect of any matters dealt with in the report; and
 - (e) against any determination by the Chief Executive that the conditions in regulation 70(3) and (4) (requirement to send copy of the report to the Director of Public Prosecutions) are not satisfied.
- (3) In paragraph (2)—
- (a) references to the findings of an investigation do not include a reference to findings on a report submitted under regulation 60 (accelerated procedure in special cases); and
 - (b) references to the report of an investigation do not include a reference to a report submitted under that regulation.
- (4) The Commission must notify the Chief Executive, every person entitled to be kept properly informed in relation to the complaint under regulation 14 and the person complained against of any appeal brought under this regulation.
- (5) On the bringing of an appeal under this regulation, the Commission may require the Chief Executive to submit a memorandum to the Commission which—

- (a) sets out whether the Chief Executive has determined that a person to whose conduct the investigation related has a case to answer, or has no case to answer, in respect of misconduct or gross misconduct;
- (b) sets out whether the Chief Executive has determined any such person's performance is, or is not, unsatisfactory;
- (c) sets out what action (if any) the Chief Executive has determined that the Chief Executive is required to or will, in the Chief Executive's discretion, take in respect of the matters dealt with in the report;
- (d) if the Chief Executive has decided in relation to a person to whose conduct the investigation related that disciplinary proceedings or unsatisfactory performance proceedings should not be brought against that person, sets out the Chief Executive's reasons for so deciding; and
- (e) if the Chief Executive made a determination that the conditions in regulation 70(3) and (4) are not satisfied, sets out the reasons for that determination,

and the Chief Executive must comply with any requirement under this paragraph.

(6) Where the Commission so requires on the bringing of any appeal under this regulation in the case of an investigation by the Chief Executive on the Chief Executive's own behalf, the Chief Executive must provide the Commission with a copy of the report of the investigation.

(7) On an appeal under this regulation, the Commission must determine such of the following as it considers appropriate in the circumstances—

- (a) whether the complainant has been provided with adequate information about the matters mentioned in paragraph (2)(a);
- (b) whether the findings of the investigation need to be reconsidered;
- (c) whether the Chief Executive—
 - (i) has made such a determination as is mentioned in paragraph (5)(a) or (b) that the Commission considers to be appropriate in respect of matters dealt with in the report; and
 - (ii) has determined that the Chief Executive is required to or will, in the Chief Executive's discretion, take the action (if any) that the Commission considers to be so appropriate; and
- (d) whether the conditions set out in regulation 70(3) and (4) are satisfied in respect of the report.

(8) If, on an appeal under this regulation, the Commission determines that the complainant has not been provided with adequate information about any matter, the Commission must give the Chief Executive all such directions as the Commission considers appropriate for securing that the complainant is properly informed.

(9) Nothing in paragraph (8) authorises the Commission to require the disclosure of any information the disclosure of which to the appellant has been or is capable of being withheld by virtue of regulation 16.

(10) If, on an appeal under this regulation, the Commission determines that the findings of the investigation need to be reconsidered, it must either—

- (a) review those findings without an immediate further investigation; or
- (b) direct that the complaint be re-investigated.

(11) If, on an appeal under this regulation, the Commission determines—

- (a) that the Chief Executive has not made a determination as to whether there is a case for a person to whose conduct the investigation related to answer in respect of misconduct or gross misconduct that the Commission considers appropriate;
- (b) that the Chief Executive has not made a determination as to whether such a person's performance is unsatisfactory; or
- (c) that the Chief Executive has not determined that the Chief Executive is required to or will, in the Chief Executive's discretion, take the action in respect of the matters dealt with in the report that the Commission considers appropriate,

the Commission must determine, in the light of that determination, whether or not to make recommendations under regulation 75 (duties with respect to disciplinary proceedings etc.) and make such recommendations (if any) under that regulation as it thinks fit.

(12) If disciplinary proceedings or unsatisfactory performance proceedings are brought by virtue of paragraph (11), the Chief Executive must ensure that they are proceeded with to a proper conclusion.

(13) If, on an appeal under this regulation, the Commission determines that the conditions set out in regulation 70(3) and (4) are satisfied in respect of the report, it must direct the Chief Executive to—

- (a) notify the Director of Public Prosecutions of the determination, and
- (b) send the Director a copy of the report.

(14) The Commission must give notification of any determination under this regulation to—

- (a) the Chief Executive;
- (b) the complainant;
- (c) every person entitled to be kept properly informed in relation to the complaint under regulation 14; and
- (d) except in a case where it appears to the Commission that to do so might prejudice any proposed review or re-investigation of the complaint, the person complained against.

(15) The Commission must give notification of any directions given to a person under this regulation to—

- (a) the complainant;
- (b) every person entitled to be kept properly informed in relation to the complaint under regulation 14; and
- (c) except in a case where it appears to the Commission that to do so might prejudice any proposed review or re-investigation of the complaint, the person complained against.

(16) The Chief Executive must comply with any directions given under this regulation.