
STATUTORY INSTRUMENTS

2009 No. 2133

**The UK Border Agency (Complaints
and Misconduct) Regulations 2009**

PART 1

COMPLAINTS AND MISCONDUCT

Application of the Police Reform Act 2002

4.—(1) Sections 9 (the Independent Police Complaints Commission), 19 (use of investigatory powers by or on behalf of the IPCC), 22 (power of the IPCC to issue guidance), 23 (regulations), 24 (consultation on regulations) and 27 (conduct of the IPCC’s staff) of the 2002 Act shall apply in relation to the relevant appropriate authority with the following modifications.

(2) In section 22(1) of the 2002 Act—

(a) for subsection (1) substitute—

“(1) The Commission may issue guidance to the relevant appropriate authority and any person it sees fit 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)(2), in paragraph (b)(iii)—

“(b) (iii) for “persons serving with the police” substitute “relevant officers, relevant officials of the Secretary of State or officials exercising customs revenue functions”.

(c) for subsection (3)(3) substitute—

“(3) Before issuing any guidance under this section, the Commission shall consult the relevant appropriate authority and any person it sees fit.”.

(3) In section 23(4) of the 2002 Act—

(a) In subsection (2)(k)(5), for “a person serving with the police” substitute “a relevant officer, a relevant official of the Secretary of State, or an official exercising customs revenue functions”.

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- (1) Section 22 of the 2002 Act has been amended by section 160 of, and paragraphs 1 and 8 of Schedule 12 to, the Serious Organised Crime and Police Act 2005 (c. 15); and section 6(1) of, and paragraph 11 of Schedule 4 to, the Police and Justice Act 2006.
- (2) Section 22(2) of the 2002 Act has been amended by section 160 of, and paragraphs 1 and 8 of Schedule 12 to, the Serious Organised Crime and Police Act 2005.
- (3) Section 22(3) of the 2002 Act has been amended by section 6(1) of, and paragraph 11 of Schedule 4 to, the Police and Justice Act 2006.
- (4) Section 23 of the 2002 Act has been amended by section 160 of, and paragraphs 1 and 9 to Schedule 12 to, the Serious Organised Crime and Police Act 2005; and section 127 of, and paragraphs 1 and 2 of Schedule 23 to, the Criminal Justice and Immigration Act 2008 (c. 4).
- (5) Section 23(2) of the 2002 Act has been amended by section 160 of, and paragraphs 1 and 9 of Schedule 12 to, the Serious Organised Crime and Police Act 2005; and section 127 of, and paragraphs 1 and 2 of Schedule 23 to, the Criminal Justice and Immigration Act 2008.

- (b) In subsection (2)(n), for “police authorities and chief officers” substitute “the Secretary of State”.
- (c) In subsection (2)(p)—
 - (i) for “chief officers” substitute “the relevant appropriate authority”; and
 - (ii) for “them” substitute “it”.
- (4) In section 24(6) of the 2002 Act—
 - (a) At the end of paragraph (a) insert “and”;
 - (b) Omit paragraphs (b) and (c).

5.—(1) Paragraph 6 (staff) of Schedule 2 (the Independent Police Complaints Commission) to the 2002 Act shall apply in relation to the relevant appropriate authority and the IPCC may make arrangements with the relevant appropriate authority under which persons are engaged on temporary service with the IPCC.

General functions of the IPCC

- 6.—**(1) The functions of the IPCC in relation to the relevant appropriate authority, shall be—
- (a) to secure the maintenance by the IPCC itself, and by the relevant appropriate authority, of suitable arrangements with respect to the matters mentioned in paragraph (2);
 - (b) to keep under review all arrangements maintained with respect to those matters;
 - (c) to secure that arrangements maintained with respect to those matters comply with the requirements of the provisions of this Part, are efficient and effective and contain and manifest an appropriate degree of independence;
 - (d) to 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;
 - (e) to make such recommendations, and to give such advice, for the modification of the arrangements maintained with respect to those matters, as appear, from the carrying out by the IPCC of its other functions, to be necessary or desirable.
- (2) Those matters are—
- (a) the handling of complaints made about the conduct of relevant officers, relevant officials of the Secretary of State and officials exercising customs revenue functions which the relevant appropriate authority—
 - (i) has a duty to refer to the IPCC under regulation 21(1) (reference of complaints to the IPCC) of these Regulations or,
 - (ii) may refer to the IPCC under regulation 21(5) or (6) (reference of complaints to the IPCC) of these Regulations;
 - (b) the recording of matters from which it appears that—
 - (i) there may have been conduct by such persons which constitutes or involves the commission of a criminal offence or behaviour justifying disciplinary proceedings, and
 - (ii) that conduct or behaviour is conduct or behaviour which the relevant appropriate authority has a duty to refer to the IPCC under regulation 23(1) (reference of conduct

(6) Section 24 of the 2002 Act has been amended by section 6(1) of, and paragraph 12 of Schedule 4 to, the Police and Justice Act 2006.

- matters to the IPCC) or may refer to the IPCC under regulation 23(4) or (5) of these Regulations;
- (c) the recording of matters from which it appears that a person has died or suffered serious injury during, or following, contact with a relevant officer, relevant official of the Secretary of State or an official exercising customs revenue functions;
 - (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) It shall be the duty of the IPCC—
- (a) to 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) to secure that arrangements exist which are conducive to, and facilitate, the reporting of misconduct by persons in relation to whose conduct the IPCC has functions.
- (4) In carrying out its functions under paragraph (1)(d) and (e) the IPCC shall only have regard to the following matters—
- (a) the handling of those complaints which—
 - (i) falls within regulation 21(1) of these Regulations;
 - (ii) the IPCC has notified the relevant appropriate authority that it requires to be referred to it for its consideration; or
 - (iii) the relevant appropriate authority has referred to the Commission on the grounds that it would be appropriate to do so by reason of—
 - (aa) the gravity of the subject matter of the complaint; or
 - (bb) any exceptional circumstances;
 - (b) the recording of conduct matters which—
 - (i) fall within regulation 23(1) of these Regulations;
 - (ii) the IPCC has notified the relevant appropriate authority that it requires to be referred to it for its consideration;
 - (iii) the relevant appropriate authority has referred to the IPCC on the grounds that it would be appropriate to do so by reason of—
 - (aa) the gravity of the subject matter of the complaint; or
 - (bb) any exceptional circumstances;
 - (c) the recording of a DSI matter; 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.
- (5) It shall be the duty of the IPCC—
- (a) to exercise the powers and perform the duties conferred on it by the 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) to secure that arrangements exist which are conducive to, and facilitate, the reporting of misconduct by persons in relation to whose conduct the IPCC has functions.
- (6) It shall also be the duty of the IPCC to carry out its functions under paragraph (1) in relation to the following:
- (a) any DSI matter;
 - (b) those complaints falling within paragraph 4(a);

- (c) those conduct matters falling within paragraph 4(b);
 - (d) those complaints or recordable conduct matters which the IPCC has notified the relevant appropriate authority that it requires to be referred to it for its consideration;
 - (e) those complaints or recordable conduct matters that the relevant appropriate authority has referred to the IPCC on the grounds that it would be appropriate to do so by reason of —
 - (i) the gravity of the subject-matter of the complaint; or
 - (ii) any exceptional circumstances; and
 - (f) any matter that is subject to any of the appeal rights set out in Part 8 (appeals) of these Regulations.
- (7) It shall also be the duty of the IPCC—
- (a) to enter into arrangements with the Chief Inspector of the UKBA for the purpose of securing co-operation, in the carrying out of their respective functions, between the Chief Inspector of the UKBA, Her Majesty’s Chief Inspector of Prisons, and the Prison and Probation Ombudsman in relation to the exercise of functions by relevant officials, relevant officers of the Secretary of State and officials exercising customs revenue functions; and
 - (b) to provide those inspectors with all such assistance and co-operation as may be required by those arrangements, or as otherwise appears to the IPCC to be appropriate, for facilitating the carrying out by those persons of their functions.
- (8) Subject to the other provisions of these Regulations, the IPCC 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.
- (9) The IPCC 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 IPCC for the purposes of, or in connection with, the carrying out of that function as it thinks fit.
- (10) Nothing in these Regulations shall confer any function on the IPCC in relation to so much of any complaint or conduct matter as relates to the direction and control of a relevant officer, relevant official of the Secretary of State, or an official exercising customs revenue functions.

Reports to the Secretary of State

- 7.—(1) As soon as practicable after the end of each of its financial years, the IPCC shall make a report to the Secretary of State on the carrying out of its functions under these Regulations during that year.
- (2) The IPCC shall 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 IPCC 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 IPCC’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 IPCC shall prepare such reports containing advice and recommendations as it thinks appropriate for the purpose of carrying out its function under regulation 6(1)(e) (general functions of the IPCC).

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

- (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 IPCC shall send a copy of every report under paragraph (1), (3) and (4) to Secretary of State and the relevant appropriate authority.

(7) The IPCC shall send a copy of every report made or prepared by it under paragraphs (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 IPCC otherwise to have a particular interest in its contents,

as the IPCC thinks fit.

Complaints, matters and persons to which 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 relevant officer, relevant official of the Secretary of State or an official exercising customs revenue functions 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;
- (d) a person acting on behalf of a person falling within any of sub-paragraphs (a) to (c).

(2) In these Regulations “conduct matter” means (subject to the following provisions of this regulation, regulation 13(2) (initial handling and recording of complaints) and 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 relevant officer, relevant official of the Secretary of State or an official exercising customs revenue functions may have—

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

(3) In these Regulations “DSI matter” means any circumstance (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 (4) or (5) are satisfied.

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

- (a) had been arrested by a relevant officer, relevant official of the Secretary of State or an official exercising customs revenue functions and had not been released from that arrest; or
- (b) was otherwise detained in the custody of a relevant officer, relevant official of the Secretary of State or an official exercising customs revenue functions.

(5) The requirements of this paragraph are that—

- (a) at or before the time of the death or serious injury the person had contact (of whatever kind, and whether direct or indirect) with a relevant officer, relevant official of the Secretary of State or an official exercising customs revenue functions; and
 - (b) there is an indication that the contact may have caused (whether directly or indirectly) or contributed to the death or serious injury.
- (6) 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 (8), 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 of the alleged effects of the conduct.
- (7) 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.
- (8) For the purposes of this regulation a person shall be taken to have witnessed conduct if, and only if—
- (a) the person acquired his knowledge of that conduct 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 possessed anything which would in any such proceedings constitute admissible evidence of that conduct.
- (9) For the purposes of these Regulations a person falling within paragraph 1(a) to (c) shall not be taken to have authorised another person to act on that person's behalf unless—
- (a) that other person is for the time being designated for the purposes of this regulation by the IPCC as a person through whom complaints may be made, or is of a description of persons so designated; or
 - (b) the other person has been given, and is able to produce, the written consent of the person on whose behalf action is taken, to so acting.

Direction and control matters

9.—(1) Nothing in these Regulations shall have effect with respect to so much of any complaint as relates to the direction and control of a relevant officer, relevant official of the Secretary of State or an official exercising customs revenue functions.

(2) The Secretary of State may issue guidance to any person he sees fits about the handling of so much of a complaint as relates to the direction and control of a relevant officer, relevant official of the Secretary of State or an official exercising customs revenue functions.

Co-operation, assistance and information

10.—(1) It shall be the duty of the relevant appropriate authority, the Chief Inspector of the UKBA, Her Majesty's Chief Inspector of Prisons and the Prisons and Probation Ombudsman to ensure that they are kept informed, in relation to relevant officers, relevant officials of the Secretary of State and officials exercising customs revenue functions, about all matters falling within paragraph (2).

(2) Those matters are—

- (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.

(3) Where the relevant appropriate authority requires a chief officer to provide a member of his force for appointment under regulation 38 (investigation by a police force at the request of the relevant appropriate authority) or where the IPCC requires the chief officer to provide a member of his force for appointment under regulation 40 (investigation by a police force under the management or under the supervision of the IPCC) it shall be the duty of the chief officer to whom the requirement is addressed to comply with it.

(4) It shall be the duty of the Secretary of State, the relevant appropriate authority, a police authority maintaining a police force within which a person is appointed under regulation 38 or 40 and the chief officer of a police force appointed under regulation 38 or 40 to provide—

- (a) the IPCC and every member of the IPCC's staff with all such assistance and co-operation as the IPCC or that member of staff may reasonably require for the purposes of, or in connection with, the carrying out of any investigation by the IPCC under these Regulations; and
- (b) the relevant appropriate authority and every member of the relevant appropriate authority's staff with all such assistance and co-operation as the relevant appropriate authority or that member of staff may reasonably require for the purposes of, or in connection with, the carrying out of any investigation by the relevant appropriate authority under these Regulations.

(5) It shall be the duty of the relevant appropriate authority to ensure that a person appointed under regulations 38, 39 (investigations supervised by the IPCC), 40, 41 (investigations managed by the IPCC) and 42 (investigations by the IPCC itself) to carry out an investigation or part of 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

11.—(1) This regulation applies where—

- (a) a police force is required to provide assistance in connection with an investigation under Part 5 of these Regulations (investigations);
- (b) a police force is required to provide the IPCC with assistance in connection with an investigation; or
- (c) a police force provides assistance by agreement under regulation 38(2) (investigation by a police force at the request of the relevant appropriate authority) or 40(2) (investigation by a police force under the management or under the supervision of the IPCC) of these Regulations.

(2) For the purposes of this regulation assistance is required to be provided by a police force in connection with an investigation under Part 5 of these Regulations if the chief officer of that force complies with a requirement under regulation 10(4) (co-operation, assistance and information) that is made in connection with—

- (i) an investigation relating to the conduct of a person who, at the time of the conduct, was a relevant officer, relevant official of the State, or an official exercising customs revenue functions, or
- (ii) an investigation of a DSI matter in relation to which the person being investigated was, at the time of the death or serious injury, a relevant officer, relevant official of the State or an official exercising customs revenue functions.

(3) Where the assistance is required to be provided by a police force to a relevant appropriate authority it shall pay to the police authority maintaining that force such contribution towards the costs of the assistance—

- (a) as may be agreed between them; or
- (b) in the absence of an agreement, as may be determined in accordance with any arrangements which—
 - (i) have been agreed to by police authorities generally and the Secretary of State; 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 Part 5 of these Regulations; or
- (c) in the absence of any such arrangements, as may be determined by the Secretary of State.

(4) Paragraph (3) shall have effect in relation to assistance which a police force provides by agreement under regulation 38(2) or 40(2) as if the reference in that subsection to required to be provided were a reference to provided by agreement under regulation 38(2) or 40(2).

(5) Where the assistance is required to be provided by a police force to the IPCC, it shall pay to the police authority maintaining that force such contribution (if any) towards the costs of the assistance—

- (a) as may be agreed between the IPCC and that authority; or
- (b) in the absence of an agreement, as may be determined in accordance with any arrangements which—
 - (i) have been agreed to by police authorities generally and by the IPCC; 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 this Part, to the IPCC; or
- (c) in the absence of any such arrangements, as may be determined by the Secretary of State.