
STATUTORY INSTRUMENTS

2010 No. 1813

**The Revenue and Customs (Complaints
and Misconduct) Regulations 2010**

PART 1

GENERAL

Citation and commencement

1. These Regulations may be cited as the Revenue and Customs (Complaints and Misconduct) Regulations 2010 and shall come into force on 5th August 2010.

Revocation and transitional provision

2.—(1) Subject to paragraph (2), the Revenue and Customs (Complaints and Misconduct) Regulations 2005⁽¹⁾ and the Revenue and Customs (Complaints and Misconduct) (Amendment) Regulations 2006⁽²⁾ are revoked.

(2) Where an allegation in respect of the conduct by an officer came to the attention of the appropriate authority before the 5th August 2010, nothing in these Regulations shall apply and the Revenue and Customs (Complaints and Misconduct) Regulations 2005 shall continue to have effect.

Interpretation

3.—(1) In these Regulations—

“2002 Act” means the Police Reform Act 2002⁽³⁾;

“appropriate authority”—

- (a) in relation to the Commissioners or an officer or in relation to any complaint, matter or investigation relating to the conduct of such a person, means—
 - (i) if that person is the Chairman, the Chief Executive or the Permanent Secretary for Tax, the Head of the Home Civil Service,
 - (ii) if that person is a Commissioner, the Chief Executive unless that Commissioner is the Chairman, the Permanent Secretary for Tax or the Chief Executive, or
 - (iii) if that person is an officer, the Commissioners (other than the Chairman, the Chief Executive and the Permanent Secretary for Tax), and
- (b) in relation to a death or serious injury matter and the relevant officer, means the Commissioners (other than the Chairman, the Chief Executive and the Permanent Secretary for Tax);

“the Chairman” means the Chairman of the Board of HMRC;

(1) [S.I. 2005/3311](#).

(2) [2006/1748](#).

(3) [2002 c. 30](#). The 2002 Act has been amended by a number of amendments.

- “the Chief Executive” means the Chief Executive of HMRC;
- “chief officer” means the chief officer of police of any police force;
- “the Commissioners” unless a contrary intention appears, means the Commissioners for Her Majesty’s Revenue and Customs and for the purposes of these Regulations includes the Chairman (and unless a contrary intention appears, “Commissioner” is to be construed accordingly);
- “complainant” shall be construed in accordance with paragraph (4);
- “complaint” has the meaning given by regulation 9 (complaints, matters and persons to which these Regulations apply);
- “conduct” includes acts, omissions and statements (whether actual, alleged or inferred);
- “conduct matter” has the meaning given by regulation 9;
- “death or serious injury matter” and “DSI matter” have the meaning given by regulation 9;
- “disciplinary proceedings” means any proceedings or management process during which the conduct of the Commissioners or an officer is considered in order to determine whether a sanction or punitive measure should be imposed against that person in relation to that conduct;
- “document” means anything in which information of any description is recorded;
- “function” in relation to the Commissioners or officers has the meaning given by section 51(2) of the Commissioners for Revenue and Customs Act 2005;
- “HMRC” means Her Majesty’s Revenue and Customs;
- “information” includes estimates and projections, and statistical analyses;
- “IPCC” means the Independent Police Complaints Commission and has the meaning given by section 9(1) of the 2002 Act;
- “officer” means, unless the context otherwise requires, an officer of Revenue and Customs;
- “the Permanent Secretary for Tax” means HMRC’s Permanent Secretary for Tax;
- “the person complained against”, in relation to a complaint, means the person whose conduct is the subject-matter of the complaint;
- “the person investigating”, in relation to a complaint, recordable conduct matter or DSI matter, means the person appointed or designated to investigate that complaint or matter;
- “recordable conduct matter” means—
- (a) a conduct matter that is required to be recorded by the appropriate authority under regulation 23 (conduct matters arising in civil proceedings) or 24 (recording etc. of conduct matters in other cases), or has been so recorded; or
 - (b) except in paragraph (3) of regulation 19 (initial handling and recording of complaints), any matter brought to the attention of the appropriate authority under that paragraph;
- “relevant offence” means—
- (a) an offence for which the sentence is fixed by law,
 - (b) an offence for which a person of 18 years or over (not previously convicted) may be sentenced to imprisonment for a term of seven years or more (or might be so sentenced but for the restrictions imposed by section 33 of the Magistrates’ Courts Act 1980(4));
- “serious injury” means a fracture, a deep cut, a deep laceration or an injury causing damage to an internal organ or the impairment of any bodily function.

(4) 1980 c. 43. Section 33 has been amended by sections 17(3)(b) and 101(1) of, and Schedule 4 Part II and paragraph 6 of Schedule 12 to, the Criminal Justice Act 1991 (c. 53); sections 2(3)(a) and (b) of the Aggravated Vehicle-Taking Act 1992 (c. 11); sections 165 and 168(1) of, and paragraph 65 of Schedule 9 to, the Powers of the Criminal Courts (Sentencing) Act 2000 (c. 6).

- (2) In these Regulations “the relevant officer”, in relation to a DSI matter, means the officer—
- (a) who arrested the person who has died or suffered serious injury,
 - (b) in whose custody that person was at the time of the death or serious injury, or
 - (c) with whom that person had the contact in question;

and where there is more than one such officer it means, subject to paragraph (3), the one who so dealt with that person last before the death or serious injury occurred.

(3) Where it cannot be determined which of two or more officers dealt with a person last before a death or serious injury occurred, the “relevant officer” is the most senior of them.

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

- (a) except in the case of anything which is or purports to be a complaint falling within regulation 9(1)(d) (complaints, matters and persons to which these Regulations apply), to the person by whom the complaint or purported complaint was made; and
- (b) in that case, to the person on whose behalf the complaint or purported complaint was made;

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

(5) Subject to paragraph (6), references in these Regulations, in relation to any conduct or anything purporting to be a complaint about any conduct, to a member of the public include references to any person who is a Commissioner or an officer (whether at the time of the conduct or any subsequent time).

(6) In these Regulations references, in relation to any conduct or to anything purporting to be a complaint about any conduct, to a member of the public do not include references to—

- (a) a person who, at the time when the conduct was supposed to have taken place in relation to that person, was a Commissioner or an officer (whether or not that person was on duty in that person’s capacity as a Commissioner or officer at that time), or
- (b) a person who at the time when that person is supposed to have been adversely affected by it, or to have witnessed it, was on duty in that person’s capacity as a Commissioner or officer.

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

(8) References in these Regulations to the investigation of any complaint or matter by the appropriate authority on its own behalf, under the supervision of the IPCC, under the management of the IPCC or by the IPCC itself shall be construed as references to its investigation in accordance with—

- (a) regulation 44 (investigations by the appropriate authority on its own behalf),
- (b) regulation 45 (investigations supervised by the IPCC),
- (c) regulation 46 (investigations by a police force under the management or under the supervision of the IPCC),
- (d) regulation 47 (investigations managed by the IPCC), or
- (e) regulation 48 (investigations by the IPCC itself).

Application: general

4. These Regulations shall apply for the purpose of conferring functions on the IPCC in relation to the Commissioners and officers, in the exercise of their functions in or in relation to England and Wales.

Application of the 2002 Act

5.—(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 to the Commissioners and officers with the following modifications.

(2) In section 22(5) of the 2002 Act—

(a) for subsection (1) substitute—

“(1) The Commission may issue guidance to Her Majesty’s Revenue and Customs and any person it sees fit concerning the exercise or performance by the persons to whom the guidance is issued, of any powers or duties specified in subsection (2).”;

(b) in subsection (2)(10) for “persons serving with the police” substitute “persons serving with Her Majesty’s Revenue and Customs”;

(c) for subsection (3)(6) substitute—

“(3) Before issuing any guidance under this section, the Commission shall consult Her Majesty’s Revenue and Customs and any person it sees fit.”;

(d) in subsection (4) for “the Secretary of State” substitute “the Chancellor of the Exchequer”;

(e) omit subsection (5)(c).

(3) In section 23(7) of the 2002 Act—

(a) in subsection (2)(k)(8), for “a person serving with the police” substitute “a person serving with Her Majesty’s Revenue and Customs”;

(b) in subsection (2)(p), for “chief officers” substitute “the Commissioners for Her Majesty’s Revenue and Customs”.

(4) In section 24(9) of the 2002 Act—

(a) at the end of paragraph (a) insert “and Her Majesty’s Revenue and Customs”;

(b) omit paragraphs (b) and (c).

Temporary service and copies of accounts

6.—(1) The IPCC may make arrangements with the Commissioners under which officers are engaged on temporary service with the IPCC.

(2) Copies of the statement referred to in paragraph 17(1)(c) of Schedule 2 to the 2002 Act (accounts) shall also be sent to the Treasury.

(5) Section 22 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 (c. 48).

(10) Section 22(2) has been amended by section 160 of, and paragraphs 1 and 8 of Schedule 12 to, the Serious Organised Crime and Police Act 2005.

(6) Section 22(3) has been amended by section 160 of, and paragraph 11 of Schedule 4 to, the Police and Justice Act 2006.

(7) Section 23 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 (c. 4).

(8) Section 23(2) 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.

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

General functions of the IPCC in relation to the Commissioners and officers

- 7.—(1) The functions of the IPCC in relation to the Commissioners and officers shall be—
- (a) to secure the maintenance by the IPCC itself, and by the Commissioners, 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 following 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 the Commissioners or officers which the appropriate authority—
 - (i) has a duty to refer to the IPCC under regulation 28(1) (reference of complaints to the IPCC), or
 - (ii) may refer to the IPCC under regulation 28(4) or (5);
 - (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 appropriate authority has a duty to refer to the IPCC under regulation 30(1) (reference of conduct matters to the IPCC) or may refer to the IPCC under regulation 30(5) or (6) 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 an officer;
 - (d) the manner in which any such complaints or any such matters as are mentioned in subparagraph (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) It shall also be the duty of the IPCC—
- (a) to enter into arrangements with the chief inspector of constabulary for the purpose of securing co-operation, in the carrying out of their respective functions in relation to the Commissioners and officers, between the IPCC and the inspectors of constabulary, 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 inspectors of their functions.

(5) 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.

(6) 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 function under paragraph (1)(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.

(7) 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 HMRC by the Commissioners.

Reports to the Chancellor of the Exchequer

8.—(1) As soon as practicable after the end of each of its financial years, the IPCC shall also make a report to the Chancellor of the Exchequer (“the Chancellor”) on the carrying out of its functions during that year.

(2) The IPCC shall also make such reports to the Chancellor about matters relating generally to the carrying out of its functions as the Chancellor may, from time to time, require.

(3) The IPCC may, from time to time, make such other reports to the Chancellor as it considers appropriate for drawing the Chancellor’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 Chancellor’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 7(1)(e) (general functions of the IPCC in relation to Commissioners and officers).

(5) Where the Chancellor receives any report under this regulation, the Chancellor 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 Chancellor 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 annual report under paragraph (1) to the Commissioners.

(7) The IPCC shall send a copy of every report under paragraph (3) to the Commissioners.

(8) The IPCC shall send a copy of every report under paragraph (4) to—

- (a) the Chancellor of the Exchequer, and
- (b) the Commissioners.

(9) 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

9.—(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 Commissioner or an officer 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, and regulation 19(3)) 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 Commissioner or an officer 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 “death or serious injury matter” (“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 an officer and had not been released from that arrest, or
 - (b) was otherwise detained in the custody of an officer.
- (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 an officer who was acting in the execution of duties, 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) In paragraph (3) the reference to a person includes an officer, but in relation to such a person “contact” in paragraph (5) does not include contact that the officer has whilst acting in the execution of duties.
- (7) 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.
- (8) 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.
- (9) For the purposes of this regulation a person shall be taken to have witnessed conduct if, and only if—

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- (a) that person acquired 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) that person possesses or controls anything which would in any such proceedings constitute admissible evidence of that conduct.
- (10) 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 these Regulations 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 to such action, of the person on whose behalf that action is taken.

Handling of complaints, conduct matters and DSI matters etc

- 10.** These Regulations shall have effect subject to regulation 11 (direction and control matters).

Direction and control matters

- 11.** Nothing in these Regulations shall have effect with respect to so much of any complaint as relates to the direction and control of HMRC by the Commissioners.