
STATUTORY INSTRUMENTS

2009 No. 2133

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

PART 3

REFERRAL OF MATTERS TO THE IPCC

Recording and reference of conduct matters

20.—(1) Any conduct matter which is required to be referred to the IPCC shall be referred in such manner as the IPCC specifies and—

- (a) if the matter falls within paragraph (1)(a) or (b) of regulation 23 (reference of conduct matters to the IPCC), not later than the end of the day following the day on which it first becomes clear to the relevant appropriate authority that the conduct matter is one to which that paragraph applies, and
- (b) if the matter falls within paragraph (1)(c) of regulation 23, not later than the end of the day following the day on which the IPCC notifies the relevant appropriate authority that the conduct matter is to be referred.

(2) Any DSI matter which is required to be referred to the IPCC shall be referred in such manner as the IPCC specifies and—

- (a) in a case where the IPCC directs that the matter be referred to it, within time limits defined in guidance issued by the IPCC, but no later than the day on which the IPCC so directs;
- (b) in any other case, within time limits defined in guidance issued by the IPCC, but no later than the day on which the matter first comes to the attention of the relevant appropriate authority.

Reference of complaints to the IPCC

21.—(1) Where the complaint is—

- (a) one alleging that the conduct complained of has resulted in death or serious injury;
- (b) any complaint not falling within paragraph (a) but alleging conduct which constitutes—
 - (i) a serious assault, as defined in guidance issued by the IPCC;
 - (ii) a serious sexual offence, as defined in guidance issued by the IPCC;
 - (iii) serious corruption, as defined in guidance issued by the IPCC;
 - (iv) a criminal offence aggravated by discriminatory behaviour on the grounds of a person's race, sex, religion, or other status identified in guidance by the IPCC;
 - (v) a complaint which refers to an allegation of an infringement of Article 2 or 3 of the European Convention on Human Rights; or
- (c) which arises from the same incident as one in which any conduct falling within paragraph (a) or (b) is alleged; or

- (d) one in respect of which the IPCC notifies the relevant appropriate authority that it requires the complaint in question to be referred to the IPCC for its consideration,

it shall be the duty of the relevant appropriate authority to refer the complaint to the IPCC.

(2) In a case where there is no obligation under paragraph (1) to make a reference, the relevant appropriate authority may refer a complaint to the IPCC if that authority considers that it would be appropriate to do so by reason of—

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

(3) Where a complaint is required to be referred to the IPCC under paragraph (1)(a) or (b), notification of the complaint shall be given to the IPCC—

- (a) not later than the end of the day following the day on which it first becomes clear to the relevant appropriate authority that the complaint is one to which that sub-paragraph applies, and
- (b) in such manner as the IPCC specifies.

(4) Where a complaint is required to be referred to the IPCC under paragraph (1)(d), notification of the complaint shall be given to the IPCC—

- (a) not later than the end of the day following the day on which the IPCC notifies the relevant appropriate authority that the complaint is to be referred, and
- (b) in such manner as the IPCC specifies.

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

- (a) the power of the IPCC by virtue of paragraph (1)(d) to require a complaint to be referred to it, and
- (b) the power of the relevant appropriate authority to refer a complaint to the IPCC under paragraph (2),

shall each be exercisable at any time irrespective of whether the complaint is already being investigated by any person or has already been considered by the IPCC.

(6) Where the relevant appropriate authority refers a complaint to the IPCC under this regulation that person or they shall give a notification of the making of the reference—

- (a) to the complainant, and
- (b) except in a case where it appears to the relevant appropriate authority that to do so might prejudice a possible future investigation of the complaint, to the person complained against.

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

- (a) shall not be required to be referred again under this regulation unless the IPCC so directs; and
- (b) shall not be referred in exercise of any power conferred by this regulation unless the IPCC consents.

(8) Where a complaint is required to be referred to the IPCC under paragraph (1)(d), notification of the complaint shall be given to the IPCC—

- (a) not later than the end of the day following the day on which the IPCC notifies the relevant appropriate authority that the complaint is to be referred, and
- (b) in such manner as the IPCC specifies.

Duties of the IPCC on references under regulation 21

22.—(1) It shall be the duty of the IPCC in the case of every complaint referred to it by the relevant appropriate authority, to determine whether or not it is necessary for the complaint to be investigated.

(2) Where the IPCC determines under this regulation that it is not necessary for a complaint to be investigated, it may, if it thinks fit, refer the complaint back to the relevant appropriate authority in accordance with paragraph (3).

(3) In a case to which paragraph (2) applies the relevant appropriate authority shall not be required by virtue of any provisions of these Regulations to take any action in relation to the complaint but may handle the complaint in whatever manner it thinks fit, or take no action in relation to the complaint.

(4) Where the IPCC refers a complaint back under paragraph (2), it shall give a notification of the making of the reference back—

- (a) to the complainant, and
- (b) to the person complained against.

Reference of conduct matters to the IPCC

23.—(1) It shall be the duty of the relevant appropriate authority to refer a recordable conduct matter to the IPCC if, (whether or not falling within regulation 18 (recording etc. of conduct matters in other cases))—

- (a) that matter relates to any incident or circumstances in or in consequence of which any person has died or suffered serious injury which has not been previously reported as a DSI matter;
- (b) that matter is of a description specified in paragraph (2); or
- (c) the IPCC notifies the relevant appropriate authority that it requires that matter to be referred to the IPCC for its consideration.

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

- (a) a serious assault, as defined in guidance issued by the IPCC;
- (b) a serious sexual offence, as defined in guidance issued by the IPCC;
- (c) serious corruption, as defined in guidance issued by the IPCC;
- (d) a criminal offence or behaviour which is liable to lead to a disciplinary sanction and which in either case was aggravated by discriminatory behaviour on the grounds of a person's race, sex, religion, or other status identified in guidance by the IPCC;
- (e) a complaint which refers to an allegation of an infringement of Article 2 or 3 of the European Convention on Human Rights;
- (f) conduct whose gravity or other exceptional circumstances make it appropriate to record the matter in which the conduct is involved; or
- (g) conduct which is alleged to have taken place in the same incident as one in which conduct with sub-paragraphs (a) to (e) is alleged.

(3) The obligation on the relevant appropriate authority under paragraph (1)(a) or (1)(b) to refer a recordable conduct matter arises only if it is satisfied that the matter is one in respect of which there is an indication that the person may have—

- (a) committed a criminal offence; or

- (b) behaved in a manner which would justify the bringing of disciplinary proceedings and that such behaviour (if it had taken place) would be likely to lead to the termination of that person's office or employment.

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

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

(5) Where there is an obligation under this regulation to refer any matter to the IPCC, it must be so referred within such period as may be provided for in these Regulations.

(6) The following powers—

- (a) the power of the IPCC by virtue of paragraph (1)(c) to require a matter to be referred to it, and
- (b) the power of the relevant appropriate authority to refer any matter to the IPCC under paragraph (3) or (4),

shall each be exercisable at any time irrespective of whether the matter is already being investigated by any person or has already been considered by the IPCC.

(7) Where—

- (a) the relevant appropriate authority refers a matter to the IPCC under this regulation and
- (b) the relevant appropriate authority does not consider that to do so might prejudice a possible future investigation of that matter,

it shall give a notification of the making of the reference to the person to whose conduct that matter relates.

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

- (a) shall not be required to be referred again under this regulation unless the IPCC so directs; and
- (b) shall not be referred in exercise of any power conferred by this regulation unless the IPCC consents.

Duties of the IPCC on references under regulation 23

24.—(1) It shall be the duty of the IPCC, in the case of every recordable conduct matter referred to it by the relevant appropriate authority under regulation 23 (reference of conduct matters to the IPCC), to determine whether or not it is necessary for the matter to be investigated.

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

(3) Where—

- (a) the IPCC refers a matter back to the relevant appropriate authority under this regulation, and
- (b) the IPCC does not consider that to do so might prejudice a possible future investigation of that matter,

the IPCC shall give a notification of the making of the reference to the person to whose conduct that matter relates.