
STATUTORY INSTRUMENTS

2009 No. 2133

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

PART 4

HANDLING DSI MATTERS

Duty to record DSI matters

25.—(1) Where a DSI matter comes to the attention of the relevant appropriate authority, it shall be its duty to record that matter.

(2) If it appears to the IPCC—

(a) that any matter that has come to its attention is a DSI matter, but

(b) that that matter has not been recorded by the relevant appropriate authority,

the IPCC may direct the relevant appropriate authority to record that matter; and it shall be the duty of that authority to comply with the direction.

Duty to preserve evidence relating to DSI matters

26.—(1) Where a DSI matter comes to the attention of the relevant appropriate authority it shall be its duty to take all such steps as appear to it to be appropriate for the purposes of these Regulations for obtaining and preserving evidence relating to that matter.

(2) The relevant appropriate authority's duty under paragraph (1) must be performed as soon as practicable after it becomes aware of the matter in question.

(3) After that, it shall be under a duty, until it is satisfied that it is no longer necessary to do so, to continue to take the steps from time to time appearing to it to be appropriate for the purposes of these Regulations for obtaining and preserving evidence relating to the matter.

(4) It shall be the duty of the relevant appropriate authority to take all such specific steps for obtaining or preserving evidence relating to any DSI matter as they may be directed to take for the purposes of this regulation by the IPCC.

Reference of DSI matters to the IPCC

27.—(1) It shall be the duty of the relevant appropriate authority to refer a DSI matter to the IPCC.

(2) The relevant appropriate authority must do so within the period specified in regulation 21(3) (reference of complaints to the IPCC).

(3) A matter that has already been referred to the IPCC under this regulation on a previous occasion shall not be required to be referred again under this regulation unless the IPCC so directs.

Duties of IPCC on references under regulation 27

28.—(1) It shall be the duty of the IPCC, in the case of every DSI matter referred to it by the relevant appropriate authority, 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 DSI matter to be investigated, it may if it thinks fit refer the matter back to the relevant appropriate authority to be dealt with by it in such manner (if any) as the relevant appropriate authority may determine.

Procedure where conduct matter is revealed during investigation of DSI matter

29.—(1) If during the course of an investigation of a DSI matter it appears to a person appointed under regulation 39 (investigations supervised by the IPCC), 41 (investigations managed by the IPCC) or 42 (investigations by the IPCC itself) that there is an indication that a relevant officer, relevant official of the Secretary of State or an official exercising customs revenue functions (“the person whose conduct is in question”) may have—

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

the person so appointed shall make a notification to that effect to the IPCC.

(2) If, after considering a notification under paragraph (1), the IPCC determines that there is such an indication, it shall—

- (a) notify the relevant appropriate authority and send to it 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 38 (investigation by a police force at the request of the relevant appropriate authority), or 40 (investigation by a police force under the management or supervision of the IPCC) that there is an indication that a relevant officer, a relevant official of the Secretary of State or an official exercising customs revenue functions (“the person whose conduct is in question”) may have—

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

the person so appointed shall make a notification to that effect to the relevant appropriate authority and on completion on that investigation shall carry out the steps set out in regulation 61 (action by a police force on completion of an investigation report).

(4) Where the relevant appropriate authority—

- (a) is notified of a determination by the IPCC under paragraph (2); or
- (b) is notified of a determination by the person appointed under regulation 38 or 40 in accordance with regulation 61(2);

it shall record the matter under regulation 18 (recording etc. of conduct matters in other cases) as a conduct matter (and the other provisions of Part 5 of these Regulations (investigations) shall apply in relation to that matter accordingly).

(5) Where a DSI matter is recorded under regulation 18 as a conduct matter by virtue of paragraph (4)—

- (a) the person investigating the DSI matter shall (subject to any determination made by the IPCC under regulation 31(2) (power of the IPCC to determine the form of an investigation)) continue the investigation as if appointed to investigate the conduct matter, and
- (b) the other provisions of Part 5 of these Regulations shall apply in relation to that matter accordingly.