
STATUTORY INSTRUMENTS

2009 No. 2133

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

PART 5

INVESTIGATIONS

Withdrawn and discontinued complaints

36.—(1) If a relevant appropriate authority receives from a complainant notification in writing signed by the complainant or by a solicitor or other authorised agent on the complainant's behalf to the effect either—

- (a) that the complainant withdraws the complaint, or
- (b) that the complainant does not wish any further steps to be taken in consequence of the complaint,

then the relevant appropriate authority shall forthwith record the withdrawal or the fact that the complainant does not wish any further steps to be taken, as the case may be, and subject to paragraphs (2) to (12) shall cease to apply in respect of that complaint.

(2) Where a complainant gives such notification as is mentioned in paragraph (1) to the IPCC but, so far as is apparent to the IPCC, has not sent that notification to the relevant appropriate authority, then—

- (a) the IPCC shall send a copy of the notification to the relevant appropriate authority;
- (b) that relevant appropriate authority shall record the withdrawal or the fact that the complainant does not wish any further steps to be taken, as the case may be; and
- (c) subject to the following provisions of this regulation, these Regulations shall cease to apply in respect of that complaint.

(3) Where a complainant gives such notification as is mentioned in paragraph (1) to an relevant appropriate authority, or where the relevant appropriate authority receives a copy of a notification under paragraph (2), and it relates to a complaint—

- (a) which was referred to the IPCC under regulation 21(1) (reference of complaints to the IPCC) and which has not been referred back to the relevant appropriate authority under regulation 22(2) (duties of the IPCC on references under regulation 21);
- (b) which the relevant appropriate authority knows is currently the subject of an appeal to the IPCC under regulation 15 (failures to notify or record a complaint), or 70 (appeals to the IPCC with respect to an investigation) or
- (c) which was notified to the relevant appropriate authority by the IPCC under regulation 13(1) (initial handling and recording of complaints),

then the relevant appropriate authority shall notify the IPCC that it has recorded the withdrawal of the complaint or the fact that the complainant does not wish any further steps to be taken, as the case may be.

- (4) In a case falling within paragraph (3)(b) or (c), the relevant appropriate authority shall also—
- (a) determine whether it is in the public interest for the complaint to be treated as a recordable conduct matter; and
 - (b) notify the IPCC of its determination and the reasons for the determination.

(5) In a case falling within paragraph (3)(a), the IPCC shall determine whether it is in the public interest for the complaint to be treated as a recordable conduct matter, and shall notify the relevant appropriate authority of its decision.

(6) Where a determination is made that a complaint is to be treated as a recordable conduct matter, then the provisions of these Regulations shall apply to that matter.

(7) Where a complainant gives such notification as is mentioned in paragraph (1) to an relevant appropriate authority, or where the relevant appropriate authority receives a copy of a notification under paragraph (2), and that notification relates to a complaint which does not fall within any of sub-paragraphs (a) to (c) of paragraph (3), then—

- (a) the relevant appropriate authority shall determine whether it is in the public interest for the complaint to be treated as a recordable conduct matter;
- (b) if the complaint is to be treated as a recordable conduct matter, the provisions of these Regulations shall apply to that matter;
- (c) if the complaint is not to be treated as a recordable conduct matter, the provisions of these Regulations shall cease to apply in respect of that complaint.

(8) In a case where—

- (a) a complaint has been subjected to an investigation by the relevant appropriate authority on its own behalf;
- (b) the complaint is currently subject to an appeal to the IPCC under regulation 70; and
- (c) the relevant appropriate authority has notified the IPCC under paragraph (4)(b) that it has determined that the complaint is not to be treated as a recordable conduct matter,

the IPCC shall consider whether it is in the public interest for that determination to be reversed, and if so it shall instruct the relevant appropriate authority to reverse the decision.

(9) Where a complainant indicates the wish to withdraw the complaint or the wish that no further steps are to be taken in consequence of the complaint, but the complainant fails to provide a notification to that effect in writing signed by or on behalf of the complainant, then—

- (a) in the case of an indication received by the relevant appropriate authority, the authority shall take the steps set out in paragraph (10);
- (b) in the case of an indication received by the IPCC, the IPCC shall refer the matter to the relevant appropriate authority which shall take the steps set out in paragraph (10).

(10) Those steps are—

- (a) the relevant appropriate authority shall write to the complainant to ascertain whether the complainant wishes to withdraw the complaint or does not wish any further steps to be taken in consequence of the complaint;
- (b) if the complainant indicates the wish to withdraw the complaint or does not wish any further steps to be taken in consequence of the complaint, or if the complainant fails to reply within 21 days, the relevant appropriate authority shall treat the indication as though it had been received in writing signed by the complainant;
- (c) if the complainant indicates the wish not to withdraw the complaint, or the wish that further steps be taken to be taken in consequence of the complaint, the relevant appropriate authority shall start or resume the investigation as the case may be.

(11) The relevant appropriate authority shall notify the person complained against if—

- (a) it records the withdrawal of a complaint or the fact that the complainant does not wish any further steps to be taken;
- (b) it determines that a complaint shall be treated as a recordable conduct matter;
- (c) the IPCC determines that a complaint shall be treated as a recordable conduct matter;
- (d) the IPCC instructs it to reverse a decision not to treat a complaint as a recordable conduct matter;
- (e) the provisions of these Regulations cease to apply in respect of a complaint.

(12) But nothing in paragraph (11) shall require the relevant appropriate authority to make a notification if it has previously decided under regulation 56(3) (notification of complaints etc.) not to notify the person complained against of the complaint because it is of the opinion that that might prejudice any criminal investigation or pending proceedings or would be contrary to the public interest.