
STATUTORY INSTRUMENTS

2010 No. 1813

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

PART 9

APPEALS

Appeals to the IPCC: failures to notify or record a complaint

73.—(1) An appeal under regulation 21 (failures to notify or record a complaint) against any failure referred to in regulation 21(3) shall be made within 28 days of the date on which notification of that failure is made or sent to the complainant under regulation 21(2).

(2) Any such appeal shall be made in writing and shall state—

- (a) details of the complaint;
- (b) the date on which the complaint was made;
- (c) the name of the Head of the Home Civil Service, the Chief Executive or the Commissioner (other than the Chairman, the Chief Executive and the Permanent Secretary) who gave notification of the failure;
- (d) the grounds for the appeal; and
- (e) the date on which the complainant was notified of the determination or of the failure to record the complaint.

(3) Where the IPCC receives such an appeal it shall—

- (a) notify the Head of the Home Civil Service, the Chief Executive or the Commissioners (other than the Chairman, the Chief Executive and the Permanent Secretary) concerned of the appeal, and
- (b) request any information from any person which it considers necessary to dispose of the appeal.

(4) Where the IPCC receives an appeal which fails to comply with one or more of the requirements mentioned in paragraph (2), it may decide to proceed as if those requirements had been complied with.

(5) The Head of the Home Civil Service, the Chief Executive or the Commissioners (other than the Chairman, the Chief Executive and the Permanent Secretary) shall supply to the IPCC any information requested under paragraph (3)(b).

(6) The IPCC shall determine the outcome of the appeal as soon as practicable.

(7) The IPCC shall notify the complainant and the Head of the Home Civil Service, the Chief Executive or the Commissioners (other than the Chairman, the Chief Executive and the Permanent Secretary) concerned of the reasons for its determination.

(8) The IPCC may extend the time period mentioned in paragraph (1) in any case where it is satisfied that by reason of the special circumstances of the case it is just to do so.

Appeals to the IPCC with respect to an investigation

- 74.—(1) This regulation applies where a complaint has been subjected to—
- (a) an investigation by the appropriate authority on its own behalf; or
 - (b) an investigation under the supervision of the IPCC.
- (2) The complainant shall have the following rights of appeal to the IPCC—
- (a) a right of appeal on the grounds that the complainant has not been provided with adequate information—
 - (i) about the findings of the investigation; or
 - (ii) about any determination of the appropriate authority relating to the taking (or not taking) of action in respect of any matters dealt with in the report on the investigation;
 - (b) a right of appeal against the findings of the investigation;
 - (c) a right of appeal against any determination by the appropriate authority that a person to whose conduct the investigation related has a case to answer in respect of that person's conduct or has no case to answer;
 - (d) a right of appeal against any determination by the appropriate authority relating to the taking (or not taking) of action in respect of any matters dealt with in the report; and
 - (e) a right of appeal against any determination by the appropriate authority under regulation 68(2)(a) (action by the appropriate authority in response to an investigation report under regulation 66), as a result of which it is not required to send the Director of Public Prosecutions or, as the case may be, the Director of Revenue and Customs Prosecutions a copy of the report.
- (3) On the bringing of an appeal under this regulation, the IPCC may require the appropriate authority to submit a memorandum to the IPCC which—
- (a) sets out whether the appropriate authority has determined that a person to whose conduct the investigation related has a case to answer in respect of that person's conduct or has no case to answer;
 - (b) if the appropriate authority is proposing to take any action, sets out what action it is proposing to take;
 - (c) if the appropriate authority has decided in relation to a person to whose conduct the investigation related, that disciplinary proceedings should not be brought against that person, sets out its reasons for so deciding; and
 - (d) if the appropriate authority made a determination under regulation 68(2)(a) as a result of which it is not required to send the Director of Public Prosecutions or, as the case may be, the Director of Revenue and Customs Prosecutions, a copy of the report relating to the investigation, sets out the reasons for that determination;
- and it shall be the duty of the appropriate authority to comply with any requirement under this paragraph.
- (4) Where the IPCC so requires on the bringing of any appeal under this regulation in the case of an investigation by the appropriate authority on its own behalf, the appropriate authority shall provide the IPCC with a copy of the report of the investigation.
- (5) On an appeal under this regulation, the IPCC shall determine such of the following as it considers appropriate in the circumstances—
- (a) whether the complainant has been provided with adequate information about the matters mentioned in paragraph (2)(a);
 - (b) whether the findings of the investigation need to be reconsidered; and

- (c) whether the appropriate authority—
 - (i) has made such a determination as is mentioned in paragraph (3)(a) that the IPCC considers to be appropriate in respect of matters dealt with in the report, and
 - (ii) has determined that it is required to or will, in its discretion, take the action (if any) that the IPCC considers to be so appropriate; and
 - (d) whether the conditions set out in regulation 68(3) and (4) are satisfied in respect of the report on the investigation.
- (6) Where, on an appeal under this regulation, the IPCC determines that the complainant has not been provided with adequate information about any matter, the IPCC shall give the appropriate authority all such directions as the IPCC considers appropriate for securing that the complainant is properly informed.
- (7) Nothing in paragraph (6) shall authorise the IPCC to require the disclosure of any information the disclosure of which to the appellants has been or is capable of being withheld by virtue of regulation 60.
- (8) Where, on an appeal under this regulation, the IPCC determines that the findings of the investigation need to be reconsidered, it shall either—
- (a) review those findings without an immediate further investigation; or
 - (b) direct that the complaint be re-investigated.
- (9) Where, on an appeal under this regulation, the IPCC determines that the appropriate authority has not made a determination as to whether there is a case for a person to whose conduct the investigation related to answer that the IPCC considers appropriate or has not determined that it is required to or will, in its discretion, take the action in respect of the matters dealt with in the report that the IPCC considers appropriate, the IPCC shall—
- (a) determine, in the light of that determination, whether or not to make recommendations under regulation 71 (duties with respect to disciplinary proceedings); and
 - (b) make such recommendations (if any) under that regulation as it thinks fit.
- (10) Where, on an appeal under this regulation, the IPCC determines that the conditions set out in regulation 68(3) and (4) are satisfied in respect of the report, it shall direct the appropriate authority—
- (a) to notify the Director of Public Prosecutions or, as the case may be, the Director of Revenue and Customs Prosecutions, of the IPCC's determination; and
 - (b) to send the Director a copy of the report.
- (11) The IPCC shall give notification of any determination under this regulation—
- (a) to the appropriate authority;
 - (b) to the complainant;
 - (c) to every person entitled to be kept properly informed in relation to the complaint under regulation 55 (duty to provide information for other persons); and
 - (d) except in a case where it appears to the IPCC that to do so might prejudice any proposed review or re-investigation of the complaint, to the person complained against.
- (12) The IPCC shall also give notification of any directions given to the appropriate authority under this regulation—
- (a) to the complainant;
 - (b) to every person entitled to be kept properly informed in relation to the complaint under regulation 55; and
 - (c) except in a case where it appears to the IPCC that to do so might prejudice any proposed review or re-investigation of the complaint, to the person complained against.

(13) It shall be the duty of the appropriate authority to comply with any directions given to it under this regulation.

(14) Any appeal made by a complainant under this regulation shall be made within 28 days of the date on which the appropriate authority sends a notification to the complainant of its determination under regulation 68(12) as to what action (if any) it will take in respect of the matters dealt with in the investigation report.

(15) Any such appeal shall be in writing and shall state—

- (a) details of the complaint;
- (b) the date on which the complaint was made;
- (c) the grounds for the appeal; and
- (d) the date on which the complainant received notification under regulation 68(12).

(16) Where the IPCC receives such an appeal, it shall request any information from any person which it considers necessary to dispose of the appeal.

(17) Where the IPCC receives an appeal which fails to comply with one or more of the requirements mentioned in paragraph (15), it may decide to proceed as if those requirements had been complied with.

(18) The appropriate authority shall supply to the IPCC any further information requested of it under paragraph (16).

(19) The IPCC shall determine the outcome of the appeal as soon as practicable.

(20) The IPCC shall notify the complainant and the appropriate authority of the reasons for its determination.

(21) The IPCC may extend the time period mentioned in paragraph (14) in any case where it is satisfied that by reason of the special circumstances of the case it is just to do so.

Reviews and re-investigations following an appeal

75.—(1) On a review under regulation 74(8)(a) (appeals to the IPCC with respect to an investigation) of the findings of an investigation, the powers of the IPCC shall be, according to its determination on that review, to do one or more of the following—

- (a) to uphold the findings in whole or in part;
- (b) to give the appropriate authority such directions as the IPCC thinks fit—
 - (i) as to the carrying out by the appropriate authority of its own review of the findings,
 - (ii) as to the information to be provided to the complainant, and
 - (iii) generally as to the handling of the matter in future;
- (c) to direct that the complaint be re-investigated.

(2) Where the IPCC directs under regulation 74 or paragraph (1) that a complaint be re-investigated, it shall make a determination of the form that the re-investigation should take.

(3) Paragraphs (3) to (8) of regulation 38 (power of the IPCC to determine the form of an investigation) shall apply in relation to a determination under paragraph (2) as they apply in the case of a determination under that regulation.

(4) The provisions of these Regulations shall apply in relation to any re-investigation in pursuance of a direction under regulation 74(9) or paragraph (1) as they apply in relation to any investigation in pursuance of a determination under regulation 38.

(5) The IPCC shall give notification of any determination made by it under this regulation—

- (a) to the appropriate authority;

- (b) to the complainant;
 - (c) to every person entitled to be kept properly informed in relation to the complaint under regulation 55 (duty to provide information for other persons); and
 - (d) except in a case where it appears to the IPCC that to do so might prejudice any proposed re-investigation of the complaint, to the person complained against.
- (6) The IPCC shall also give notification of any directions given to the appropriate authority under this regulation—
- (a) to the complainant;
 - (b) to every person entitled to be kept properly informed in relation to the complaint under regulation 55; and
 - (c) except in a case where it appears to the IPCC that to do so might prejudice any proposed review or re-investigation of the complaint, to the person complained against.