

2017 No. 521

EMPLOYMENT, ENGLAND AND WALES

**The Gangmasters and Labour Abuse Authority (Complaints and
Misconduct) Regulations 2017**

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The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 26D(1), (2) and (6) and 105(4) and (5) of the Police Reform Act 2002(a).

(a) 2002 c. 30. Section 26D was inserted by paragraph 12 of Schedule 3 to the Immigration Act 2016 (c. 19).

In accordance with section 24 of that Act^(a), the Secretary of State has consulted with the Independent Police Complaints Commission, such persons as appear to her to represent the views of police and crime commissioners, the Mayor’s Office for Policing and Crime, the Common Council, the National Police Chiefs’ Council and such other persons as she thinks fit.

In accordance with section 63(3)(b) of the Police Act 1996^(b), the Secretary of State has supplied a draft of these Regulations to the Police Advisory Board of England and Wales and has taken into account its representations before making these Regulations.

PART 1

INTRODUCTORY

Citation and commencement

1. These Regulations may be cited as the Gangmasters and Labour Abuse Authority (Complaints and Misconduct) Regulations 2017 and come into force on 30th April 2017.

Interpretation

2. In these Regulations—

“the 2002 Act” means the Police Reform Act 2002;

“the Authority” means the Gangmasters and Labour Abuse Authority;

“the Authority’s standards” means the standards in accordance with which a LAPO is required to comply under the Authority’s conduct and performance policies;

“bank holiday” means a day which is a bank holiday under the Banking and Financial Dealings Act 1971^(c) in England and Wales;

“the Chief Executive” means the chief executive of the Authority, appointed in accordance with regulations made under section 1(5) of the Gangmasters (Licensing) Act 2004^(d);

“the Commission” means the Independent Police Complaints Commission;

“complainant” is to be construed in accordance with regulation 8(2);

“complaint” has the meaning given by regulation 8(1);

“conduct” includes acts, omissions, statements and decisions (whether actual, alleged or inferred);

“conduct matter” has the meaning given by regulation 8(5);

“death or serious injury matter” (or “DSI matter” for short) has the meaning given by regulation 8(6);

“disciplinary proceedings”, in relation to a LAPO, means any proceedings or management process in accordance with which the conduct of the LAPO is considered in order to determine whether it is misconduct or gross misconduct and if so whether, as a result, any action is to be taken in relation to it;

“gross misconduct” means a breach of the Authority’s standards so serious that it warrants dismissal;

(a) Section 24 was amended by paragraph 12 of Schedule 4 to the Police and Justice Act 2006 (c. 48), paragraph 289 of Schedule 16 to the Police Reform and Social Responsibility Act 2011 (c. 13) and paragraphs 6 and 7 of Schedule 14 to the Policing and Crime Act 2017 (c. 3).

(b) 1996 c. 16. Section 63(3)(b) was substituted by paragraphs 68 and 78 of Schedule 4 to the Serious Organised Crime Act 2005 (c. 15); there have been further amendments to section 63 that are not relevant for these purposes.

(c) 1971 c. 80.

(d) 2004 c. 11.

“labour abuse prevention officer” (or “LAPO” for short) has the meaning given by section 114B of the Police and Criminal Evidence Act 1984(a);

“LAPO friend” means a person chosen in accordance with regulation 57;

“local resolution”, in relation to a complaint, means the handling of that complaint in accordance with a procedure which—

- (a) does not involve a formal investigation; and
- (b) is laid down in regulation 26 for complaints which it has been decided, in accordance with regulation 23, to subject to local resolution;

“misconduct” means a breach of the Authority’s standards;

“person complained against”, in relation to a complaint, means the person whose conduct is the subject matter of the complaint;

“recordable conduct matter” means a conduct matter that is required to be recorded by the Chief Executive under regulation 28 or 29 or has been so recorded;

“relevant offence” means—

- (a) an offence for which the sentence is fixed by law; or
- (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 might be so sentenced but for the restrictions imposed by section 33 of the Magistrates’ Courts Act 1980(b));

“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;

“serving with the police”, in relation to a person, is to be construed in accordance with section 12(7) of the 2002 Act(c);

“trade union” has the same meaning as in section 1 of the Trade Union and Labour Relations (Consolidation) Act 1992(d);

“unsatisfactory performance proceedings”, in relation to a LAPO, means any proceedings or management process in accordance with which the performance of the LAPO is considered in order to determine whether it is unsatisfactory or whether, as a result, any action is to be taken in relation to it;

“working day” means any day other than a Saturday or Sunday or a day which is a bank holiday or public holiday in England and Wales.

Transitional provision

3.—(1) Regulation 48 applies with the following modifications until each of section 57(4), Chapter 1 of Part 2 and Chapter 1 of Part 6 of the Investigatory Powers Act 2016(e) are in force.

(2) Regulation 48(2)(b) applies as if for “protected information relating to a relevant warrant” there were substituted “intercept information”.

(3) Regulation 48(4) applies as if—

- (a) after the definition of “intelligence service” there were inserted—

““intercept information” means information relating to any of the matters mentioned in section 19(3) of the Regulation of Investigatory Powers Act 2000(f);”;

(a) 1984 c. 60. Section 114B was inserted by section 12(1) of the Immigration Act 2016.
(b) 1980 c. 43. Section 33 has been amended by section 17 of, and Part II of Schedule 4 to, the Criminal Justice Act 1991 (c. 53), section 2 of the Aggravated Vehicle-Taking Act 1992 (c. 11), paragraph 65 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) and paragraphs 25 and 27 of Schedule 32 to the Criminal Justice Act 2003 (c. 44).
(c) Section 12(7) has been amended by paragraphs 277 and 280 of Schedule 16 to the Police Reform and Social Responsibility Act 2011. Section 12(8)-(10) was inserted by section 135 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12).
(d) 1992 c. 52.
(e) 2016 c. 25.
(f) 2000 c. 23.

- (b) the definitions of “protected information” and “relevant warrant” were omitted;
- (c) in the definition of “relevant authority”, for paragraph (e) there were substituted—
“(e) in the case of intercept information, the person to whom the relevant interception warrant is or was addressed”; and
- (d) at the end there were inserted—
““relevant interception warrant” means the interception warrant issued under section 5 of the Regulation of Investigatory Powers Act 2000 that relates to the intercept information.”.

PART 2

COMPLAINTS AND MISCONDUCT

Application: general

4. These Regulations confer functions on the Commission in relation to the exercise of functions by officers of the Authority in their capacity as LAPOs.

Application of the 2002 Act etc.

5.—(1) The following provisions of, or made under, the 2002 Act apply in relation to the exercise of functions by officers of the Authority in their capacity as LAPOs with the modifications set out in paragraphs (2) to (4) below:

- (a) section 9 (the Independent Police Complaints Commission);
- (b) section 19 (use of investigatory powers by or on behalf of the Commission);
- (c) section 22(a) (power of the Commission to issue guidance);
- (d) section 24 (consultation on regulations);
- (e) any regulations made under section 27 (conduct of the Commission’s staff); and
- (f) any regulations made under Schedule 2 (the Independent Police Complaints Commission).

(2) Section 22 of the 2002 Act applies as if—

- (a) for subsection (1) there were substituted—
“(1) The Commission may issue guidance—
 - (a) to the Chief Executive; and
 - (b) to officers of the Authority who have been authorised by the Secretary of the State for the purposes of section 114B of the Police and Criminal Evidence Act 1984, concerning the exercise or performance, by the persons to whom the guidance is issued, of any of the powers or duties specified in subsection (2).”;
- (b) in subsection (2)(b)(iii) for “persons serving with the police” there were substituted “labour abuse prevention officers”;
- (c) for subsection (3) there were substituted—
“(3) Before issuing any guidance under this section, the Commission must consult with—
 - (a) the Chief Executive; and
 - (b) such other persons as it thinks fit.”;
- (d) in subsection (5)(b) for “the appropriate authority” there were substituted “the Chief Executive”; and

(a) There are amendments to section 22 not relevant to these Regulations.

- (e) in subsection (5)(f) for “paragraph 23 or 25 of Schedule 3” there were substituted “regulations 69 and 73 of the Gangmasters and Labour Abuse Authority (Complaints and Misconduct) Regulations 2017”.

(3) Section 24 of the 2002 Act applies as if for paragraphs (b) to (d)(a) there were substituted—

“(b) the Authority; and

(c) such other persons as the Secretary of State thinks fit.”.

(4) Where a provision listed in paragraph (1) (as modified by paragraphs (2) and (3)) contains a term that is defined in regulation 2 of these Regulations, the definition given in regulation 2 (rather than any definition contained in a provision of, or another provision made under, the 2002 Act) applies for the purposes of the application of the relevant provision in relation to the exercise of functions by officers of the Authority in their capacity as LAPOs.

General functions of the Commission under these Regulations

6.—(1) The Commission must—

- (a) secure the maintenance by the Commission itself, and by the Chief Executive, of suitable arrangements with respect to the matters mentioned in paragraph (2);
- (b) keep under review all arrangements maintained with respect to those matters;
- (c) secure that arrangements maintained with respect to those matters—
 - (i) comply with the requirements of the provisions of these Regulations;
 - (ii) are efficient and effective; and
 - (iii) contain and manifest an appropriate degree of independence;
- (d) 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; and
- (e) make such recommendations, and give such advice, for the modification of the arrangements maintained with respect to those matters as appear, from the carrying out by the Commission of its other functions, to be necessary or desirable.

(2) Those matters are—

- (a) the handling of complaints made about the conduct of a LAPO;
- (b) the recording of matters from which it appears that there may have been conduct by a LAPO which constitutes or involves the commission of a criminal offence or behaviour justifying disciplinary proceedings;
- (c) the recording of matters from which it appears that a person has died or suffered serious injury during, or following, contact with a LAPO; and
- (d) the manner in which any such complaints or any such matters as are mentioned in paragraph (b) or (c) are investigated or otherwise handled and dealt with.

(3) The Commission must—

- (a) 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) secure that arrangements exist which are conducive to, and facilitate, the reporting of misconduct by LAPOs.

(4) Subject to the other provisions of these Regulations, the Commission may do anything which appears to it to be calculated to facilitate, or is incidental or conducive to, the carrying out of its functions under these Regulations.

(a) Paragraphs (b) to (c) were first substituted by paragraph 12 of Schedule 4 to the Police and Justice Act 2006 (c. 48). Paragraph (b), as substituted, was then substituted by paragraphs 277 and 289 of Schedule 16 to the Police Reform and Social Responsibility Act 2011 (c. 13).

(5) The Commission 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 functions under paragraph (1)(c), (d) or (e), impose any such charge on that person for anything done by the Commission for the purposes of, or in connection with, the carrying out of its function as it thinks fit.

Reports to the Secretary of State

7.—(1) As soon as practicable after the end of each of its financial years, the Commission must make a report to the Secretary of State on the carrying out of its functions under these Regulations during that year.

(2) The Commission must also make such reports to the Secretary of State about matters relating generally to the carrying out of its functions under these Regulations as the Secretary of State may, from time to time, require.

(3) The Commission may, from time to time, make such other reports to the Secretary of State as it considers appropriate for drawing the Secretary of State's attention to matters which—

- (a) have come to the Commission's notice; and
- (b) are matters that it considers should be drawn to the Secretary of State's attention by reason of their gravity or of other exceptional circumstances.

(4) The Commission must prepare such reports containing advice and recommendations as it thinks appropriate for the purpose of carrying out its function under regulation 6(1)(e).

(5) Where the Secretary of State receives any report under this regulation, the Secretary of State must—

- (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 Secretary of State considers it appropriate to do so,

lay a copy of the report before Parliament and cause the report to be published.

(6) The Commission must send a copy of every annual report under paragraph (1) and every report under paragraph (3) to the Chief Executive.

(7) The Commission must send a copy of every report under paragraph (4) to the Secretary of State and the Chief Executive.

(8) The Commission must send a copy of every report under paragraph (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 Commission otherwise to have a particular interest in its contents,

as the Commission thinks fit.

Complaints and matters to which, and persons to whom, these Regulations apply

8.—(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 LAPO 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; or
- (d) a person authorised by a person falling within any of sub-paragraphs (a) to (c) to act on that person's behalf.

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

- (a) except in the case of anything which is or purports to be a complaint falling within paragraph (1)(d), 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 or in relation to the complainant may be done instead by or in relation to the person acting on the complainant's behalf.

(3) 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 do not include references to an officer of the Authority.

(4) 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 so suffering or being put in danger.

(5) In these Regulations, "conduct matter" means (subject to the following provisions of this regulation) 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 LAPO may have—

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

(6) In these Regulations, "death or serious injury matter" (or "DSI matter" for short) means any circumstances (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 (7) or (8) are satisfied.

(7) The requirements of this paragraph are that at the time of the death or serious injury the person—

- (a) had been arrested by a LAPO;
- (b) had not been released from that arrest; and
- (c) had not been delivered into the custody of a constable.

(8) The requirements of this paragraph are that—

- (a) at or before the time of death or serious injury the person had contact (of whatever kind, and whether direct or indirect) with a LAPO; and
- (b) there is an indication that the contact may have caused (whether directly or indirectly) or contributed to the death or serious injury.

(9) In paragraph (6), the reference to a person includes an officer of the Authority, but in relation to such a person "contact" in paragraph (8) does not include contact that the person has whilst acting in the execution of that person's duties as an officer of the Authority.

(10) 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 (11), 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 alleged effects of the conduct.

(11) 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.

(12) For the purposes of this regulation, a person is to be taken to have witnessed conduct if, and only if—

- (a) the person's knowledge of that conduct was acquired in a manner which would make that person a competent witness capable of giving admissible evidence of that conduct in criminal proceedings; or
- (b) the person has possession or control of anything which would in any such proceedings constitute admissible evidence of that conduct.

(13) For the purposes of these Regulations, a person falling within paragraph (1)(a) to (c) is not to be taken to have authorised another person to act on that person's behalf unless—

- (a) the person so acting is for the time being designated for the purposes of this regulation by the Commission as a person through whom complaints may be made, or is of a description of persons so designated; or
- (b) the person so acting has been given, and is able to produce, the written consent of the person on whose behalf the person is acting.

General duties of the Chief Executive

9.—(1) The Chief Executive must, in relation to LAPOs, keep abreast of—

- (a) matters with respect to which any provision of these Regulations has effect;
- (b) anything which is done under or for the purposes of any such provision; and
- (c) any obligations to act or refrain from acting that have arisen by or under these Regulations but have not yet been complied with, or have been contravened.

(2) The Chief Executive must provide the Commission and every member of the Commission's staff with all such assistance as the Commission or that member of staff may reasonably require for the purposes of, or in connection with, the carrying out of an investigation by the Commission under these Regulations.

(3) The Chief Executive must ensure that a person appointed under regulation 41, 42 or 43 (investigations by the Chief Executive on the Chief Executive's own behalf, supervised and managed investigations) to carry out an investigation is given all such assistance and co-operation in the carrying out of that investigation as that person may reasonably require.

Payment for assistance with investigations

10.—(1) This regulation applies where—

- (a) a person serving with the police or a National Crime Agency officer is appointed to investigate a complaint or matter further to arrangements made in pursuance of regulation 41(3)(b) or 42(2)(b) (including in a case where that regulation applies by virtue of regulation 43(2)) (investigations by the Chief Executive on the Chief Executive's own behalf, supervised and managed investigations);
- (b) a person appointed under regulation 41, 42 or 43 to carry out an investigation requests assistance from a police force or the National Crime Agency in connection with the investigation, and the police force or National Crime Agency provides that assistance; or
- (c) the Commission or a member of the Commission's staff requests assistance from a police force or the National Crime Agency in connection with an investigation under these Regulations, and the police force or National Crime Agency provides that assistance.

(2) In a case where this regulation applies by virtue of paragraph (1)(a) or (b), the Chief Executive must pay to the local policing body maintaining the relevant police force or the National Crime Agency (as the case may be) such contribution (if any) towards the costs of the assistance—

- (a) as may be agreed between them;
- (b) in the absence of an agreement, as may be determined in accordance with any arrangements which—

- (i) have been agreed to by local policing bodies generally or the National Crime Agency (as the case may be) and the Chief Executive; and
- (ii) are for the time being in force with respect to the making of contributions towards the costs of assistance provided in connection with investigations under these Regulations; or
- (c) in any other case, as may be determined by the Secretary of State.

(3) In a case where this regulation applies by virtue of paragraph (1)(c), the Commission must pay to the local policing body maintaining the relevant police force or the National Crime Agency (as the case may be) such contribution (if any) towards the costs of the assistance—

- (a) as may be agreed between them;
- (b) in the absence of an agreement, as may be determined in accordance with any arrangements which—
 - (i) have been agreed to by local policing bodies generally or the National Crime Agency (as the case may be) and the Commission; and
 - (ii) are for the time being in force with respect to the making of contributions towards the costs of assistance provided in connection with investigations under these Regulations; or
- (c) in any other case, as may be determined by the Secretary of State.

Provision of information to the Commission

11.—(1) The Chief Executive must—

- (a) provide the Commission with all such information and documents specified or described in a notification given by the Commission to the Chief Executive; and
- (b) produce or deliver up to the Commission all such evidence and other things so specified or described,

as appear to the Commission to be required by it for the purposes of the carrying out of any of its functions.

(2) Anything falling to be provided, produced or delivered up by the Chief Executive in pursuance of a requirement imposed under paragraph (1) must be provided, produced or delivered up in such form, in such manner and within such period as may be specified in—

- (a) the notification imposing the requirement; or
- (b) any subsequent notification given by the Commission to the Chief Executive for the purposes of this paragraph.

(3) Nothing in this regulation requires the Chief Executive—

- (a) to provide the Commission with any information or document, or to produce or deliver up any other thing, before the earliest time at which it is practicable for the Chief Executive to do so; or
- (b) to provide, produce or deliver up anything at all in a case in which it never becomes practicable for the Chief Executive to do so.

(4) A requirement imposed by any notification under this regulation may authorise or require information or documents to which it relates to be provided to the Commission electronically.

(5) Where the Commission or any person acting on the Commission's behalf obtains information from the Chief Executive in the course of performing a function under these Regulations, that information—

- (a) may not be used for any purpose other than in the performance of a function under these Regulations or as otherwise prescribed by law; and
- (b) may not be disclosed except as permitted under these Regulations or as otherwise prescribed by law.

Inspection of premises on behalf of the Commission

12.—(1) Where—

- (a) the Commission requires the Chief Executive to allow a person nominated for the purpose by the Commission to have access to any premises occupied for the purpose of the Authority and to documents or other things on those premises; and
- (b) the requirement is imposed for any of the purposes mentioned in paragraph (2),

the Chief Executive must secure that the required access is allowed to the nominated person.

(2) Those purposes are—

- (a) the purposes of any examination by the Commission of the efficiency and effectiveness of the arrangements made by the Chief Executive for handling complaints or dealing with recordable conduct matters or DSI matters;
- (b) the purposes of any investigation by the Commission under these Regulations or of any investigation carried out under its supervision or management.

(3) A requirement imposed under this regulation for the purposes mentioned in paragraph (2)(a) must be notified to the Chief Executive at least 48 hours before the time at which access is required.

(4) Where—

- (a) a requirement imposed under this regulation for the purposes mentioned in paragraph (2)(a) requires access to any premises, document or thing to be allowed to any person, but
- (b) there are reasonable grounds for not allowing that person to have the required access at the time at which access is sought,

the obligation to ensure that the required access is allowed has effect as an obligation to secure that the access is allowed to that person at the earliest practicable time after there cease to be any such grounds as that person may specify.

(5) The provisions of this regulation are in addition to, and without prejudice to—

- (a) the rights of entry, search and seizure that are or may be conferred on—
 - (i) a person designated for the purposes of regulation 44 (investigations by the Commission itself); or
 - (ii) any person who otherwise acts on behalf of the Commission, in that person's capacity as a constable or as a person with the powers and privileges of a constable; or
- (b) the obligations of the Chief Executive under regulations 9 and 11.

Duty to keep the complainant informed

13.—(1) Subject to regulation 16 (exceptions to the duty to keep the complainant informed and to provide information for other persons), in any case in which there is an investigation of a complaint in accordance with the provisions of these Regulations—

- (a) by the Commission; or
- (b) under its management,

the Commission must provide the complainant with all such information as will keep the complainant properly informed, while the investigation is being carried out and subsequently, of all the matters mentioned in paragraph (4).

(2) Subject to regulation 16, in any case in which there is an investigation of a complaint in accordance with the provisions of these Regulations—

- (a) by the Chief Executive on the Chief Executive's own behalf; or
- (b) under the supervision of the Commission,

the Chief Executive must provide the complainant with all such information as will keep the complainant properly informed, while the investigation is being carried out and subsequently, of all the matters mentioned in paragraph (4).

(3) Where paragraph (2) applies—

- (a) the Commission must give the Chief Executive all such directions as it considers appropriate for securing that the Chief Executive complies with its duty under that paragraph; and
- (b) the Chief Executive must comply with any direction given under this paragraph.

(4) The matters are—

- (a) the progress of the investigation;
- (b) any provisional findings of the person carrying out the investigation;
- (c) whether any report has been submitted under regulation 68 (final reports on investigations: complaints and conduct matters);
- (d) the action (if any) that is taken in respect of any of the matters dealt with in any such report; and
- (e) the outcome of any action.

(5) A person appointed or designated to carry out an investigation under these Regulations must provide the Commission or, as the case may be, the Chief Executive with all such information as the Commission or the Chief Executive may reasonably require for the purpose of performing the Commission's or the Chief Executive's duty under this regulation.

Duty to provide information for other persons

14.—(1) A person has an interest in being kept properly informed about the handling of a complaint, recordable conduct matter or DSI matter which is the subject of an investigation in accordance with the provisions of these Regulations if—

- (a) it appears to the Commission or to the Chief Executive that the person is a person falling within paragraph (2) or (3); and
- (b) that person has indicated consent to the provision of information in accordance with this regulation and that consent has not been withdrawn.

(2) A person falls within this paragraph if, in the case of a complaint or recordable conduct matter, that person—

- (a) is a relative of a person whose death is the alleged result of the conduct complained of, or to which the recordable conduct matter relates;
- (b) is a relative of a person whose serious injury is the alleged result of that conduct and that person is incapable of making a complaint; or
- (c) has suffered serious injury as the alleged result of that conduct.

(3) A person falls within this paragraph if, in the case of a DSI matter, that person—

- (a) is a relative of a person who has died;
- (b) is a relative of a person who has suffered serious injury and that person is incapable of making a complaint; or
- (c) is the person who has suffered serious injury.

(4) A person who does not fall within paragraph (2) or (3) has an interest in being kept properly informed about the handling of a complaint, conduct matter or DSI matter if—

- (a) the Commission or the Chief Executive considers that the person has an interest in the handling of the complaint, recordable conduct matter or DSI matter which is sufficient to make it appropriate for information to be provided to that person in accordance with this regulation; and
- (b) that person has indicated consent to the provision of information in accordance with this regulation.

(5) In relation to a complaint, this regulation confers no rights on the complainant.

(6) A person who has an interest in being kept properly informed about the handling of a complaint, conduct matter or DSI matter is referred to in this regulation and regulation 15 as an “interested person”.

(7) Subject to regulation 16 (exceptions to the duty to keep the complainant informed and to provide information for other persons), in any case in which there is an investigation of a complaint, recordable conduct matter or DSI matter in accordance with these Regulations—

- (a) by the Commission; or
- (b) under its management,

the Commission must provide the interested person with all such information as will keep the interested person properly informed, while the investigation is being carried out and subsequently, of all the matters mentioned in paragraph (10).

(8) Subject to regulation 16, in any case in which there is an investigation of a complaint, recordable conduct matter or DSI matter in accordance with these Regulations—

- (a) by the Chief Executive on the Chief Executive’s own behalf; or
- (b) under the supervision of the Commission,

the Chief Executive must provide the interested person with all such information as will keep the interested person properly informed, while the investigation is being carried out and subsequently, of all the matters mentioned in paragraph (10).

(9) Where paragraph (8) applies—

- (a) the Commission must give the Chief Executive all such directions as it considers appropriate for securing that the Chief Executive complies with the Chief Executive’s duty under that paragraph; and
- (b) the Chief Executive must comply with any direction given under this paragraph.

(10) The matters are—

- (a) the progress of the investigation;
- (b) any provisional findings of the person carrying out the investigation;
- (c) whether the Commission or the Chief Executive has made a determination under regulation 67 (procedure where a conduct matter is revealed during investigation of a DSI matter);
- (d) whether any report has been submitted under regulation 68 (final reports on investigations: complaints and conduct matters) or regulation 71 (final reports on investigations: DSI matters);
- (e) the action (if any) the Commission has taken in respect of any of the matters dealt with in any such report; and
- (f) the outcome of any action.

(11) Regulation 13(5) (duty to keep complainant informed) applies for the purposes of this regulation, as it applies for the purposes of that regulation.

(12) In this regulation, “relative” means any spouse, partner, parent or adult child.

Manner in which duties to provide information are to be performed

15.—(1) For the purposes of regulations 13 and 14 (duties to keep complainant and other persons informed), the manner in which the Commission or, as the case may be, the Chief Executive must perform the duties imposed by those regulations is as follows.

(2) The Commission, in a case falling within regulation 13(1) or 14(7) (investigation of a complaint, conduct matter or DSI matter by or under the management of the Commission), must inform the complainant or, as the case may be, each interested person of—

- (a) the progress of the investigation promptly and in any event—

- (i) if there has been no previous notification, within four weeks of the start of the investigation; and
 - (ii) in any other case, within four weeks of the previous notification;
 - (b) any provisional findings of the person carrying out the investigation as frequently as the Commission determines to be appropriate in order for the complainant or, as the case may be, each interested person to be kept properly informed.
- (3) The Chief Executive, in a case falling within regulation 13(2) or 14(8) (investigation of a complaint, conduct matter or DSI matter by the Chief Executive on the Chief Executive's own behalf or under the supervision of the Commission), must inform the complainant or, as the case may be, each interested person of—
- (a) the progress of the investigation promptly and in any event—
 - (i) if there has been no previous notification, within four weeks of the start of the investigation; and
 - (ii) in any other case, within four weeks of the previous notification;
 - (b) any provisional findings of the person carrying out the investigation as frequently as the Chief Executive determines to be appropriate in order for the complainant or, as the case may be, each interested person to be kept properly informed.
- (4) When an investigation has been completed, any complainant and interested person must be notified of the date on which—
- (a) the final report under regulation 68 or 71 (final reports on investigations: complaints, conduct matters and DSI matters) is likely to be submitted; and
 - (b) the notification under regulation 69(11) or 70(12) (action by the Commission or Chief Executive in response to an investigation report) is likely to be given.
- (5) In performing the duties imposed by regulations 13(1) and (2), 14(7) and (8), 69(11) and 70(12), the Commission or, as the case may be, the Chief Executive must determine whether it is appropriate to offer, or to accede to a request for, a meeting with the complainant or, as the case may be, an interested person.
- (6) As soon as practicable after any such meeting, the Commission or, as the case may be, the Chief Executive must send to the complainant or interested person a written record of the meeting and an account of how any concerns of that person will be addressed.
- (7) As soon as practicable after the conclusion of any disciplinary proceedings or unsatisfactory performance proceedings that are taken in respect of the matters dealt with in any report submitted under regulation 68, the Chief Executive must notify any complainant and interested person of the outcome of those proceedings, including the fact and outcome of any appeal against the outcome of the proceedings.
- (8) If the Commission or, as the case may be, the Chief Executive considers that an investigation has made minimal or no progress since the previous notification, the next notification may be made by any means that in the opinion of the Commission or, as the case may be, the Chief Executive is suitable.
- (9) Any notification under this regulation must be given in writing, except in a case where the notification is given at a meeting held in consequence of a determination under paragraph (5) or it is given by means other than writing in accordance with paragraph (8).

Exceptions to the duty to keep the complainant informed and to provide information for other persons

16.—(1) Subject to paragraph (3), the duties mentioned in regulation 13(1) and (2) (duty to keep complainant informed), regulation 14(7) and (8) (duty to provide information for other persons), regulation 69(11) and regulation 70(12) do not apply in circumstances where, in the opinion of the Commission, or, as the case may be, of the Chief Executive, the non-disclosure of information is necessary for the purpose of—

- (a) preventing the premature or inappropriate disclosure of information that is relevant to, or may be used in, any actual or prospective criminal proceedings;
- (b) preventing the disclosure of information in any circumstances in which its non-disclosure is—
 - (i) in the interests of national security;
 - (ii) for the purposes of the prevention or detection of crime, or the apprehension or prosecution of offenders;
 - (iii) required on proportionality grounds; or
 - (iv) otherwise necessary in the public interest.

(2) The non-disclosure of information is required on proportionality grounds if its disclosure would cause, directly or indirectly, an adverse effect which would be disproportionate to the benefits arising from its disclosure.

(3) The Commission or, as the case may be, the Chief Executive must not conclude that the non-disclosure of information is necessary under paragraph (1) unless it or, as the case may be, the Chief Executive is satisfied that—

- (a) there is a real risk of the disclosure of that information causing an adverse effect; and
- (b) that adverse effect would be significant.

(4) Without prejudice to the generality of paragraph (1), the Commission or, as the case may be, the Chief Executive must consider whether the non-disclosure of information is justified under that paragraph in circumstances where—

- (a) that information is relevant to, or may be used in, any actual or prospective disciplinary proceedings or unsatisfactory performance proceedings;
- (b) the disclosure of that information may lead to the contamination of the evidence of witnesses during such proceedings;
- (c) the disclosure of that information may prejudice the welfare or safety of any third party;
- (d) that information constitutes criminal intelligence.

PART 3

HANDLING OF COMPLAINTS

Duties to preserve evidence relating to complaints

17.—(1) Where—

- (a) a complaint is made to the Chief Executive; or
- (b) the Chief Executive becomes aware that a complaint has been made to the Commission,

the Chief Executive must take all such steps as appear to be appropriate for the purposes of these Regulations for obtaining and preserving evidence relating to the conduct complained of.

(2) The Chief Executive's duty under paragraph (1) must be performed as soon as practicable after the complaint is made or, as the case may be, the Chief Executive becomes aware of it.

(3) After that, the Chief Executive must, until satisfied that it is no longer necessary to do so, continue to take the steps which from time to time appear to the Chief Executive to be appropriate for the purposes of these Regulations for obtaining and preserving evidence relating to the conduct complained of.

(4) The Chief Executive must take all such specific steps for obtaining or preserving evidence relating to any conduct that is the subject matter of a complaint as the Chief Executive may be directed to take for the purposes of this regulation by the Commission.

Initial handling and recording of complaints

18.—(1) Where a complaint is made to the Commission, it must give notification of the complaint to the Chief Executive.

(2) But the Commission need not give that notification if the Commission considers that there are exceptional circumstances that justify it not being given.

(3) Where the Commission gives notification of a complaint under paragraph (1), the Commission must notify the complainant that the notification has been given and of what it contained.

(4) Where—

- (a) a complaint is notified to the Chief Executive under paragraph (1); or
- (b) a complaint is made to the Chief Executive,

the Chief Executive must record the complaint.

Copies of complaints etc.

19.—(1) The Chief Executive must, after recording a complaint under regulation 18(4)—

- (a) supply to the complainant a copy of the record made of that complaint; and
- (b) subject to paragraphs (2) to (4), supply to the person complained against a copy of the complaint.

(2) A copy of a complaint supplied under this regulation may be in a form which keeps anonymous the identity of the complainant or of any other person.

(3) The Chief Executive may decide not to supply such a copy of a complaint if the Chief Executive is of the opinion that to do so—

- (a) might prejudice any criminal investigation or proceedings; or
- (b) would otherwise be contrary to the public interest.

(4) Where the Chief Executive decides not to supply such a copy, the Chief Executive must keep that decision under regular review.

Failure to record a complaint

20.—(1) This regulation applies where anything which is or purports to be a complaint in relation to which regulation 18 (initial handling and recording of complaints) has effect is received by the Chief Executive (whether in consequence of having been made directly or of a notification under that regulation).

(2) If the Chief Executive decides not to record the whole or any part of what has been received, the Chief Executive must notify the complainant of the following matters—

- (a) the decision not to record the whole or part of what was received;
- (b) if the decision relates to part of what was received, the part in question;
- (c) the grounds on which the decision was made; and
- (d) that complainant's right to appeal against the decision under this regulation.

(3) The complainant may appeal to the Commission against any such decision.

(4) In a case where the Chief Executive decides not to record any of what was received, on an appeal under this regulation, the Commission must—

- (a) determine whether the Chief Executive should have recorded all or some of what was received; and
- (b) if the Commission finds in the complainant's favour, direct that the Chief Executive record all or some of what was received.

(5) In a case where the Chief Executive decides not to record part of what was received, on an appeal under this regulation, the Commission must—

- (a) determine whether the Chief Executive should have recorded some or all of that part; and
 - (b) if the Commission finds in the complainant's favour, direct that the Chief Executive record all or some of that part.
- (6) The Chief Executive must comply with any direction given under this regulation.
- (7) The Commission must—
- (a) give notification to the Chief Executive and the complainant of any determination made by it under this regulation; and
 - (b) give notification to the complainant of any direction given by it under this regulation to the Chief Executive.

Reference of complaints to the Commission

21.—(1) The Chief Executive must refer a complaint to the Commission if—

- (a) the complaint is one alleging that the conduct complained of has resulted in death or serious injury;
- (b) the complaint does not fall within sub-paragraph (a) but is one alleging conduct which constitutes—
 - (i) a serious assault, as defined in guidance issued by the Commission;
 - (ii) a serious sexual offence, as defined in guidance issued by the Commission;
 - (iii) serious corruption, as defined in guidance issued by the Commission;
 - (iv) a criminal offence or behaviour which is liable to lead to disciplinary proceedings 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 issued by the Commission;
 - (v) a relevant offence;
- (c) the complaint arises from the same incident as one in which any conduct falling within sub-paragraph (a) or (b) is alleged;
- (d) the Commission notifies the Chief Executive that it requires the complaint to be referred to it for its consideration.

(2) In a case where there is no obligation under paragraph (1) to make a reference, the Chief Executive may refer a complaint to the Commission if the Chief Executive 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 Commission under paragraph (1)(a), (b) or (c), notification of the complaint must be given to the Commission—

- (a) without delay and in any event not later than the end of the day following the day on which it first becomes clear to the Chief Executive that the complaint is one to which that paragraph applies; and
- (b) in such manner as the Commission specifies.

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

- (a) without delay and in any event not later than the end of the day following the day on which the Commission notifies the Chief Executive that the complaint is to be referred; and
- (b) in such manner as the Commission specifies.

(5) Subject to paragraph (7)—

- (a) the power of the Commission by virtue of paragraph (1)(d) to require a complaint to be referred to it; and

- (b) the power of the Chief Executive to refer a complaint to the Commission under paragraph (2),

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

(6) Where the Chief Executive refers a complaint to the Commission under this regulation the Chief Executive must give a notification of the making of the reference—

- (a) to the complainant; and
- (b) except in a case where it appears to the Chief Executive 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 Commission under this regulation on a previous occasion—

- (a) is not required to be referred again under paragraph (1), unless the Commission so directs; and
- (b) may only be referred in exercise of the power at paragraph (2) if the Commission consents.

Duties of the Commission on references under regulation 21

22.—(1) The Commission must, in the case of every complaint referred to it by the Chief Executive, determine whether or not it is necessary for the complaint to be investigated.

(2) Where the Commission 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 Chief Executive to be dealt with by the Chief Executive in accordance with regulation 23.

(3) Where the Commission refers a complaint back under paragraph (2), it must give a notification of the making of the reference back—

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

Handling of complaints by the Chief Executive

23.—(1) This regulation applies where a complaint has been recorded by the Chief Executive.

(2) But this regulation does not apply to a complaint if it is one that has been, or must be, referred to the Commission under regulation 21, unless the complaint is for the time being—

- (a) referred back to the Chief Executive under regulation 22; or
- (b) the subject of a determination under regulation 38 (power of the Commission to determine the form of an investigation).

(3) Section 24 was amended by paragraph 12 of Schedule 4 to the Police and Justice Act 2006 (c. 48), paragraph 289 of Schedule 16 to the Police Reform and Social Responsibility Act 2011 (c. 13) and paragraphs 6 and 7 of Schedule 14 to the Policing and Crime Act 2017 (c. 3).

(4) If the Chief Executive determines that the complaint is suitable for being subjected to local resolution, the Chief Executive must make arrangements for it to be so subjected

(5) If the Chief Executive determines that the complaint is not so suitable, the Chief Executive must make arrangements for the complaint to be investigated by the Chief Executive.

(6) A determination that a complaint is suitable for being subjected to local resolution may not be made unless the Chief Executive is satisfied that—

- (a) the conduct complained of (even if it were proved) would not justify the bringing of any criminal or disciplinary proceedings against the person whose conduct is complained of; and

- (b) the conduct complained of (even if it were proved) would not involve the infringement of a person's rights under Article 2 or 3 of the Convention (within the meaning of the Human Rights Act 1998^(a)).

(7) In a case where this regulation applies to a complaint by virtue of paragraph (2)(b), a determination that the complaint is suitable for being subjected to local resolution may not be made unless the Commission approves the determination.

(8) No more than one application may be made to the Commission for the purposes of paragraph (7) in respect of the same complaint.

(9) Paragraph (7) (where applicable) is in addition to paragraph (6).

Disapplication of the requirements of these Regulations

24.—(1) If, in a case in which regulation 23 applies, the Chief Executive considers—

- (a) that the complaint should be handled otherwise than in accordance with these Regulations or that no action should be taken in relation to it; and
- (b) that the complaint falls within the description of complaints specified in paragraph (7),

the Chief Executive may handle the complaint in whatever manner (if any) that the Chief Executive thinks fit.

(2) But, in a case where regulation 23 applies by virtue of regulation 23(2)(a) or (b), the Chief Executive may not handle the complaint in whatever manner (if any) the Chief Executive thinks fit unless—

- (a) the Chief Executive applies to the Commission, in accordance with these Regulations, for permission to so handle the complaint; and
- (b) the Commission gives permission.

(3) An application under paragraph (2) must be in writing and must be accompanied by—

- (a) a copy of the complaint;
- (b) an explanation of the Chief Executive's reasons for making the application; and
- (c) copies of any other documents or material in the Chief Executive's possession which are relevant to the complaint.

(4) The Chief Executive must supply any further information requested by the Commission for the purpose of considering an application made under paragraph (2).

(5) Where such an application is made to the Commission, it must—

- (a) consider the application and determine whether to grant the permission applied for; and
- (b) notify its decision to the Chief Executive and the complainant.

(6) Where an application is made under paragraph (2) in respect of any complaint, the Chief Executive must not, while the application is being considered by the Commission, take any action in accordance with the provisions of these Regulations (other than under regulation 17 (duties to preserve evidence relating to complaints)) in relation to that complaint.

(7) For the purposes of paragraph (1)(b), the description of complaints specified are those in relation to which the Chief Executive considers that—

- (a) more than 12 months have elapsed between the incident, or the latest incident, giving rise to the complaint and the making of the complaint and either that no good reason for the delay has been shown or that injustice would be likely to be caused by the delay;
- (b) the matter is already the subject of a complaint made by or on behalf of the same complainant;

(a) 1998 c. 42.

- (c) the complaint discloses neither the name and address of the complainant nor that of any other interested person and it is not reasonably practicable to ascertain such a name and address;
 - (d) the complaint is vexatious, oppressive or otherwise an abuse of the procedures for dealing with complaints;
 - (e) the complaint is repetitious; or
 - (f) it is not reasonably practicable to complete the investigation of the complaint or any other procedures under these Regulations.
- (8) For the purposes of paragraph (7)(e), a complaint is repetitious if, and only if—
- (a) it concerns substantially the same conduct as a previous conduct matter or it is substantially the same as a previous complaint made by or on behalf of the same complainant;
 - (b) it contains no fresh allegations which significantly affect the account of the conduct complained of;
 - (c) no fresh evidence, being evidence which was not reasonably available at the time the previous complaint was made, is provided in support of it;
 - (d) as respects the previous complaint or conduct matter, either—
 - (i) the complaint was resolved by local resolution in accordance with regulation 26;
 - (ii) the complaint was handled otherwise than in accordance with these Regulations or no action was taken in relation to it, in accordance with this regulation and regulation 25;
 - (iii) the Commission gave the Chief Executive a direction under regulation 65 (power to discontinue an investigation);
 - (iv) the Chief Executive disappplied the requirements of these Regulations in accordance with regulation 66(8)(b);
 - (v) the complainant gave such notification as is mentioned in regulation 40(1) (withdrawn complaints); or
 - (vi) the requirements of regulation 69(9) or 70(11) (determination by the Chief Executive of what action to take) were complied with.
- (9) For the purposes of paragraph (7)(f), it is not reasonably practicable to complete the investigation of a complaint or any other procedures under these Regulations if, and only if—
- (a) it is not reasonably practicable to communicate with the complainant or a person acting on the complainant's behalf; or
 - (b) it is not reasonably practicable to complete a satisfactory investigation in consequence of—
 - (i) a refusal or failure, on the part of the complainant, to make a statement or afford other reasonable assistance for the purposes of the investigation; or
 - (ii) the lapse of time since the event or events forming the subject matter of the complaint.
- (10) In this regulation any reference to action not being reasonably practicable includes a reference to action which it does not appear reasonable to take within a period which is reasonable in all the circumstances of the case.

Disapplication of the requirements of these Regulations: notifications, appeals etc.

25.—(1) Before deciding to handle a complaint in whatever manner (if any) the Chief Executive thinks fit in accordance with regulation 24(1), the Chief Executive must—

- (a) write to the complainant at the complainant's last known address—
 - (i) inviting the complainant to make representations in relation to the matter; and

- (ii) allowing the complainant a period of 28 days, commencing on the day after the date of the letter, to do so; and
 - (b) have regard to any representations made by the complainant.
- (2) The Chief Executive must notify the complainant—
 - (a) that the Chief Executive has decided to handle the complaint as permitted by regulation 24(1) (in a case where the Chief Executive is not required to apply for permission under regulation 24(2) to so handle the complaint);
 - (b) about the making of the application under regulation 24(2) (in a case where the Chief Executive makes such an application).
- (3) Where the complaint is to be handled in whatever manner (if any) the Chief Executive thinks fit (whether or not the Commission’s permission is needed), the Chief Executive—
 - (a) is not required by virtue of any of the provisions of these Regulations (other than regulation 17) to take any action in relation to the complaint; and
 - (b) may handle the complaint in whatever manner the Chief Executive thinks fit, or take no action in relation to the complaint, and for the purposes of handling the complaint may take any step that the Chief Executive could have taken, or would have been required to take, if the Chief Executive were not proceeding in accordance with regulation 24.
- (4) Where the Chief Executive applies to the Commission under regulation 24(2) and the Commission determines that permission should not be granted—
 - (a) the Commission must refer the matter back to the Chief Executive for the making of a determination under regulation 23(3); and
 - (b) the Chief Executive must then make that determination.
- (5) No more than one application may be made to the Commission under regulation 24(2) in respect of the same complaint.
- (6) The complainant may appeal to the Commission against any decision by the Chief Executive under regulation 24 to handle the complaint otherwise than in accordance with these Regulations or to take no action in relation to it.
- (7) But the complainant may not appeal in a case in which the appeal relates to a decision for which the Commission has given permission under regulation 24.
- (8) On an appeal under this paragraph, the Commission must—
 - (a) determine whether any decision taken by the Chief Executive under regulation 24 should have been taken in the case in question; and
 - (b) if the Commission finds in the complainant’s favour, give such directions as the Commission thinks appropriate to the Chief Executive as to the action to be taken for handling the complaint in accordance with these Regulations or handling it otherwise than in accordance with these Regulations,and the Chief Executive must comply with any directions given under sub-paragraph (b).

Local resolution of complaints

26.—(1) The arrangements made by the Chief Executive for subjecting any complaint to local resolution may include the appointment of a person who is an officer of the Authority to secure the local resolution of the complaint.

(2) The procedures that are to be available for dealing with a complaint which is to be subjected to local resolution are, subject to the provisions of this regulation, any procedures which are approved by the Commission.

(3) Where it appears to the appointed person that the complaint had in fact already been satisfactorily dealt with at the time it was brought to the appointed person’s notice, the appointed person may, subject to any representation by the complainant, treat it as having been locally resolved.

(4) The appointed person must as soon as practicable give the complainant and the person complained against an opportunity to comment on the complaint.

(5) The appointed person must not, for the purpose of locally resolving a complaint, tender on behalf of the person complained against an apology for that person's conduct unless the person complained against has agreed to the apology.

(6) Where a complaint has been dealt with by way of local resolution, a record must be made as soon as practicable of the outcome of the procedure and a copy of the record sent to the complainant and the person complained against.

(7) At the time of sending a copy of the record of outcome to the complainant under paragraph (6), the Chief Executive must notify the complainant in writing of the complainant's right of appeal against that outcome under regulation 27 (appeals relating to complaints dealt with other than by investigation).

(8) In this regulation, "the appointed person" means a person appointed under paragraph (1) to secure the local resolution of a complaint.

(9) A statement made by any person for the purposes of the local resolution of any complaint is not admissible in any subsequent criminal, civil or disciplinary proceedings except to the extent that it consists of an admission relating to a matter that has not been subjected to local resolution.

(10) If, after attempts have been made to resolve a complaint using local resolution, it appears to the Chief Executive—

- (a) that the resolution of the complaint in that manner is impossible; or
- (b) that the complaint is, for any other reason, not suitable for such resolution,

the Chief Executive must make arrangements for the complaint to be investigated by the Chief Executive.

(11) The local resolution of any complaint must be discontinued if—

- (a) any arrangements are made under paragraph (10);
- (b) the Commission notifies the Chief Executive that it requires the complaint to be referred to the Commission under regulation 21;
- (c) the complaint is so referred otherwise than in pursuance of such a notification.

(12) A person who has participated in any attempt to resolve a complaint using local resolution is disqualified for appointment under any provision of these Regulations to investigate that complaint, or to assist with the carrying out of the investigation of that complaint.

Appeals relating to complaints dealt with other than by investigation

27.—(1) The complainant may appeal to the Commission against the outcome of any complaint that is—

- (a) subjected to local resolution; or
- (b) handled otherwise than in accordance with these Regulations.

(2) On an appeal under this regulation, the Commission must—

- (a) determine whether the outcome of the complaint is a proper outcome; and
- (b) if the Commission finds in the complainant's favour, give such directions as the Commission thinks appropriate to the Chief Executive as to the action to be taken in relation to the complaint,

and the Chief Executive must comply with any directions given under paragraph (b).

PART 4

HANDLING OF CONDUCT MATTERS

Conduct matters arising in civil proceedings

28.—(1) This regulation applies where—

- (a) the Chief Executive has received notification (whether or not under this regulation) that civil proceedings relating to any matter have been brought by a member of the public against the Authority, or it otherwise appears to the Chief Executive that such proceedings are likely to be so brought; and
- (b) it appears to the Chief Executive (whether at the time of the notification or at any time subsequently) that those proceedings involve or would involve a conduct matter.

(2) The Chief Executive must determine whether the matter is one which the Chief Executive is required to refer to the Commission under regulation 32 or is one which it would be appropriate to so refer.

(3) In a case where the Chief Executive determines that the matter is one which the Chief Executive is required to refer to the Commission under regulation 32 or is one which it would be appropriate to so refer, the Chief Executive must record the matter.

(4) In any other case, the Chief Executive must determine whether the matter is repetitious within the meaning of regulation 30.

(5) In a case where the Chief Executive determines that the matter is not repetitious within the meaning of regulation 30, the Chief Executive must record the matter.

(6) In any other case, the Chief Executive may (but need not) record the matter.

(7) In a case where the Chief Executive—

- (a) records a matter under this regulation; and
- (b) is not required to refer the matter to the Commission under regulation 32 and does not do so,

the Chief Executive may deal with the matter in such other manner (if any) as the Chief Executive may determine.

(8) Nothing in paragraph (3) or (5) requires the Chief Executive to record any conduct matter if the Chief Executive is satisfied that the matter has been, or is already being, dealt with by means of criminal or disciplinary proceedings against the person to whose conduct the matter relates.

(9) For the purposes of this regulation, civil proceedings involve a conduct matter if—

- (a) they relate to such a matter; or
- (b) they are proceedings that relate to a matter in relation to which a conduct matter, or evidence of a conduct matter, is or may be relevant.

Recording etc. of conduct matters in other cases

29.—(1) This regulation applies where—

- (a) a conduct matter comes (otherwise than as mentioned in regulation 28) to the attention of the Chief Executive; and
- (b) it appears to the Chief Executive that the conduct involved in that matter falls within paragraph (2).

(2) Conduct falls within this paragraph if (assuming it to have taken place)—

- (a) it appears to have resulted in the death of any person or in serious injury to any person;
- (b) a member of the public has been adversely affected by it; or
- (c) it is of a description specified in paragraph (3).

(3) The following descriptions of conduct are specified for the purposes of paragraph (2)—

- (a) a serious assault, as defined in guidance issued by the Commission;
- (b) a serious sexual offence, as defined in guidance issued by the Commission;
- (c) serious corruption, as defined in guidance issued by the Commission;
- (d) a criminal offence or behaviour which is liable to lead to disciplinary proceedings 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 Commission;
- (e) a relevant offence;
- (f) conduct the gravity of which, 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 within sub-paragraph (a) to (f) is alleged.

(4) The Chief Executive must determine whether the matter is one which the Chief Executive is required to refer to the Commission under regulation 32 or is one which it would be appropriate to so refer.

(5) In a case in which the Chief Executive determines that the matter is one which the Chief Executive is required to refer to the Commission under regulation 32 or is one which it would be appropriate to so refer, the Chief Executive must record the matter.

(6) In any other case, the Chief Executive must determine whether the matter is repetitive within the meaning of regulation 30.

(7) In a case where the Chief Executive determines that the matter is not repetitive within the meaning of regulation 30, the Chief Executive must record the matter.

(8) In any other case, the Chief Executive may (but need not) record the matter.

(9) In a case where the Chief Executive—

- (a) records a matter under this regulation; and
- (b) is not required to refer the matter to the Commission under regulation 32 and does not do so,

the Chief Executive may deal with the matter in such other manner (if any) as the Chief Executive may determine.

(10) Nothing in paragraph (5) or (7) requires the Chief Executive to record any conduct matter if the Chief Executive is satisfied that the matter has been, or is already being, dealt with by means of criminal or disciplinary proceedings against the person to whose conduct the matter relates.

(11) If it appears to the Commission that—

- (a) any matter that has come to its attention is a recordable conduct matter; but
- (b) the matter has not been recorded by the Chief Executive,

the Commission may direct the Chief Executive to record that matter; and the Chief Executive must comply with the direction.

Conduct matters not required to be recorded

30. For the purposes of regulations 28 and 29, a conduct matter is repetitive only if—

- (a) it concerns substantially the same conduct as a previous complaint or conduct matter;
- (b) there is no fresh indication in respect of that matter that a LAPO may have committed a criminal offence or behaved in a manner which would justify the bringing of disciplinary proceedings;
- (c) there is no fresh evidence in respect of that matter which was not reasonably available at the time the previous complaint was made or the previous conduct matter was recorded;
- (d) as respects the previous complaint or conduct matter, either—
 - (i) the complaint was resolved by local resolution in accordance with regulation 26;

- (ii) the complaint was handled otherwise than in accordance with these Regulations or no action was taken in relation to it, in accordance with regulations 24 and 25 (disapplication of requirements of these Regulations);
- (iii) the Commission gave the Chief Executive a direction under regulation 66 (power to discontinue an investigation);
- (iv) the Chief Executive disapplied the requirements of these Regulations in accordance with regulation 66(18)(b);
- (v) the complainant gave such notification as is mentioned in regulation 40(1) (withdrawn complaints); or
- (vi) the requirements of regulations 69(9) or 70(11) (determination by the Chief Executive of what action to take) were complied with.

Duties to preserve evidence relating to conduct matters

31.—(1) Where the Chief Executive becomes aware of any recordable conduct matter, the Chief Executive must take all such steps as appear to be appropriate for the purposes of these Regulations for obtaining and preserving evidence relating to that matter.

(2) The Chief Executive’s duty under paragraph (1) must be performed as soon as practicable after the Chief Executive becomes aware of the matter in question.

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

(4) The Chief Executive must take all such specific steps for obtaining or preserving evidence relating to any recordable conduct matter as the Chief Executive may be directed to take for the purposes of this regulation by the Commission.

Reference of conduct matters to the Commission

32.—(1) The Chief Executive must refer a recordable conduct matter to the Commission (whether or not the case falls within regulation 28 (conduct matters arising in civil proceedings)) if—

- (a) that matter relates to any incident or circumstances in or in consequence of which any person has died or suffered serious injury;
- (b) that matter is of a description specified in paragraph (2); or
- (c) the Commission notifies the Chief Executive that it requires that matter to be referred to it 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 Commission;
- (b) a serious sexual offence, as defined in guidance issued by the Commission;
- (c) serious corruption, as defined in guidance issued by the Commission;
- (d) a criminal offence or behaviour which is liable to lead to disciplinary proceedings 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 Commission;
- (e) a relevant offence; or
- (f) conduct which is alleged to have taken place in the same incident as one in which conduct within sub-paragraphs (a) to (e) is alleged.

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

- (a) the gravity of the matter; or

(b) any exceptional circumstances.

(4) Where there is an obligation under paragraph (1) to refer a matter to the Commission, it must be referred in such manner as the Commission specifies and—

- (a) if the matter falls within paragraph (1)(a) or (b), without delay and in any event not later than the end of the day following the day on which it first becomes clear to the Chief Executive that the conduct matter is one to which that paragraph applies;
- (b) if the matter falls within paragraph (1)(c), without delay and in any event not later than the end of the day following the day on which the Commission notifies the Chief Executive that the conduct matter is to be referred.

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

- (a) the power of the Commission by virtue of paragraph (1)(c) to require a matter to be referred to it; and
- (b) the power of the Chief Executive to refer any matter to the Commission under paragraph 3,

are exercisable at any time irrespective of whether the matter is already being investigated by any person or has already been considered by the Commission.

(6) The Chief Executive must give a notification of the making of a reference under this regulation to the person to whose conduct the matter relates, unless the Chief Executive considers that to do so might prejudice a possible future investigation of the matter.

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

- (a) is not required to be referred again under paragraph (1), unless the Commission so directs; and
- (b) may only be referred in exercise of the power at paragraph (3) if the Commission consents.

Duties of the Commission on references under regulation 32

33.—(1) The Commission must, in the case of every recordable conduct matter referred to it by the Chief Executive under regulation 32, determine whether or not it is necessary for the matter to be investigated.

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

(3) Where the Commission—

- (a) refers a matter back to the Chief Executive under paragraph (2); and
- (b) does not consider that to do so might prejudice a possible future investigation of that matter,

the Commission must give a notification of the making of the reference to the person to whose conduct that matter relates.

PART 5

HANDLING OF DSI MATTERS

Duty to record DSI matters

34.—(1) Where a DSI matter comes to the attention of the Chief Executive, the Chief Executive must record that matter.

(2) If it appears to the Commission—

- (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 Chief Executive,
- the Commission may direct the Chief Executive to record that matter; and the Chief Executive must comply with the direction.

Duty to preserve evidence relating to DSI matters

35.—(1) Where the Chief Executive becomes aware of any DSI matter, the Chief Executive must take all such steps as appear to be appropriate for the purposes of these Regulations for obtaining and preserving evidence relating to that matter.

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

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

(4) The Chief Executive must take all such specific steps for obtaining or preserving evidence relating to any DSI matter as the Chief Executive may be directed to take for the purposes of this regulation by the Commission.

Reference of DSI matters to the Commission

36.—(1) The Chief Executive must refer all DSI matters which come to the Chief Executive's attention to the Commission.

(2) A DSI matter must be referred to the Commission in such manner as the Commission specifies and—

- (a) in a case where the Commission directs that the matter be referred to it, without delay and in any event not later than the end of the day following the day on which the Commission so directs; and
- (b) in any other case, without delay and in any event not later than the end of the day following the day on which the matter first comes to the attention of the Chief Executive.

(3) A matter that has already been referred to the Commission under paragraph (1) on a previous occasion is not required to be referred again, unless the Commission so directs.

Duties of the Commission on references under regulation 36

37.—(1) The Commission must, in the case of every DSI matter referred to it by the Chief Executive, determine whether or not it is necessary for the matter to be investigated.

(2) Where the Commission 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 Chief Executive to be dealt with by the Chief Executive in such manner (if any) as the Chief Executive may determine.

PART 6

INVESTIGATIONS AND SUBSEQUENT PROCEEDINGS

Power of the Commission to determine the form of an investigation

38.—(1) This regulation applies where—

- (a) a complaint, recordable conduct matter or DSI matter is referred to the Commission; and
- (b) the Commission determines that it is necessary for the complaint or matter to be investigated.

(2) The Commission must determine the form which the investigation should take.

(3) In making a determination under paragraph (2) the Commission must have regard to the following factors—

- (a) the seriousness of the case; and
- (b) the public interest.

(4) The only forms which the investigation may take in accordance with a determination made under this regulation are an investigation by—

- (a) the Chief Executive on the Chief Executive's own behalf;
- (b) the Chief Executive under the supervision of the Commission;
- (c) the Chief Executive under the management of the Commission;
- (d) the Commission.

(5) The Commission may at any time make a further determination under this regulation to replace an earlier one.

(6) Where a determination under this regulation replaces an earlier determination under this regulation, or relates to a complaint or matter in relation to which the Chief Executive has already begun an investigation on the Chief Executive's own behalf, the Commission may give—

- (a) the Chief Executive; and
- (b) any person previously appointed to carry out the investigation,

such directions as it considers appropriate for the purpose of giving effect to the new determination.

(7) A person to whom a direction is given under paragraph (6) must comply with it.

(8) The Commission must notify the Chief Executive of any determination that it makes under this regulation in relation to a particular complaint, recordable conduct matter or DSI matter.

Appointment of persons to carry out investigations

39.—(1) No person may be appointed to carry out an investigation under regulation 41, 42 or 43 (investigations by the Chief Executive on the Chief Executive's own behalf, supervised and managed investigations)—

- (a) unless that person has an appropriate level of knowledge, skills and experience to plan and manage the investigation;
- (b) if that person works, directly or indirectly, under the management of the person whose conduct is being investigated;
- (c) if that person's involvement in the role could reasonably give rise to a concern as to whether that person could act impartially under these Regulations.

Withdrawn complaints

40.—(1) If the Chief Executive 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,

the Chief Executive must as soon as possible 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 the following provisions of this regulation, these Regulations cease to apply in respect of that complaint.

(2) Where a complainant gives such notification as is mentioned in paragraph (1) to the Commission but, so far as is apparent to the Commission, has not sent that notification to the Chief Executive—

- (a) the Commission must send a copy of the notification to the Chief Executive;
- (b) the Chief Executive must 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 cease to apply in respect of that complaint.

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

- (a) which was referred to the Commission under regulation 21 and which has not been referred back to the Chief Executive under regulation 22; or
- (b) which the Chief Executive knows is currently the subject of an appeal to the Commission under regulation 20(3), 25(6), 27(1), 66(9) or 73(2),

the Chief Executive must notify the Commission that the Chief Executive 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)(a), the Commission must determine whether it is in the public interest for the complaint to be treated as a recordable conduct matter, and must notify the Chief Executive of its decision.

(5) In a case falling within paragraph (3)(b), the Chief Executive must—

- (a) determine whether it is in the public interest for the complaint to be treated as a recordable conduct matter; and
- (b) notify the Commission of the Chief Executive's determination and the reasons for that determination.

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

(7) Where a complainant gives such notification as is mentioned in paragraph (1) to the Chief Executive, or where the Chief Executive receives a copy of a notification under paragraph (2), and it relates to a complaint which does not fall within paragraph (3), the Chief Executive must determine whether it is in the public interest for the complaint to be treated as a recordable conduct matter and—

- (a) if the complaint is to be treated as a recordable conduct matter, the provisions of these Regulations apply to that matter;
- (b) if the complaint is not to be treated as a recordable conduct matter, the provisions of these Regulations cease to apply in respect of that complaint.

(8) In a case where—

- (a) a complaint has been subjected to an investigation by the Chief Executive on the Chief Executive's own behalf;
- (b) the complaint is currently subject to an appeal to the Commission under regulation 73; and
- (c) the Chief Executive has notified the Commission under paragraph (5)(b) that the Chief Executive has determined that the complaint is not to be treated as a recordable conduct matter,

the Commission must consider whether it is in the public interest for that determination to be reversed, and if so it must direct the Chief Executive to reverse the decision.

(9) Where a complainant indicates a 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 accordance with paragraph (1)—

- (a) in the case of an indication received by the Chief Executive, the Chief Executive must take the steps set out in paragraph (10);

- (b) in the case of an indication received by the Commission, the Commission must refer the matter to the Chief Executive who must take the steps set out in paragraph (10).

(10) Those steps are—

- (a) the Chief Executive must 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 indicates the wish for no further steps be taken in consequence of the complaint, or if the complainant fails to reply within a period of 28 days commencing on the day after the date of the written communication under sub-paragraph (a), the Chief Executive must 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 for further steps to be taken in consequence of the complaint, the Chief Executive must start or resume the investigation as the case may be.

(11) Subject to paragraph (12), the Chief Executive must notify the person complained against if—

- (a) the Chief Executive records the withdrawal of a complaint or the fact that the complainant does not wish any further steps to be taken;
- (b) the Chief Executive determines that a complaint is to be treated as a recordable conduct matter;
- (c) the Commission determines that a complaint is to be treated as a recordable conduct matter;
- (d) the Commission directs the Chief Executive 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) Nothing in paragraph (11) requires the Chief Executive to make a notification if the Chief Executive has previously decided under regulation 19 (copies of complaints etc.) not to supply to the person complained against a copy of the complaint.

Investigations by the Chief Executive on the Chief Executive's own behalf

41.—(1) This regulation applies if the Chief Executive is required by virtue of—

- (a) any determination made by the Chief Executive under regulation 23(3) (whether following the recording of a complaint or on a reference back under regulation 22(2)) or under regulation 26(10); or
- (b) any determination made by the Commission under regulation 38 (power of the Commission to determine the form of an investigation),

to make arrangements for a complaint, recordable conduct matter or DSI matter to be investigated by the Chief Executive on the Chief Executive's own behalf.

(2) This regulation also applies if—

- (a) a determination falls to be made by the Chief Executive under regulation 28(7), 29(9) or 33(2) in relation to any recordable conduct matter or under regulation 37(2) in relation to any DSI matter; and
- (b) the Chief Executive determines that it is necessary for the matter to be investigated by the Chief Executive on the Chief Executive's own behalf.

(3) The Chief Executive must—

- (a) appoint an officer of the Authority to investigate the complaint or matter; or
- (b) if the Chief Executive is of the opinion that having regard to regulation 39 (appointment of persons to carry out investigations) it is not possible to appoint an officer of the Authority to investigate the complaint or matter, make arrangements with a chief officer of police or the Director General of the National Crime Agency to have a person serving

with the police or a National Crime Agency officer appointed to investigate the complaint or matter.

Investigations supervised by the Commission

42.—(1) This regulation applies where the Commission has determined that it should supervise the investigation by the Chief Executive of any complaint, recordable conduct matter or DSI matter.

(2) On being given notice of that determination, the Chief Executive must, if the Chief Executive has not already done so—

- (a) appoint an officer of the Authority to investigate the complaint or matter; or
- (b) if the Chief Executive is of the opinion that having regard to regulation 39 (appointment of persons to carry out investigations) it is not possible to appoint an officer of the Authority to investigate the complaint or matter, make arrangements with a chief officer of police or the Director General of the National Crime Agency to have a person serving with the police or a National Crime Agency officer appointed to investigate the complaint or matter.

(3) The Commission may require that no appointment is made under paragraph (2) unless it has given notice to the Chief Executive that it approves the person whom the Chief Executive proposes to appoint.

(4) Where a person has already been appointed to investigate the complaint or matter, or is selected under this paragraph for appointment, and the Commission is not satisfied with that person, the Commission may require the Chief Executive, as soon as reasonably practicable after being required to do so—

- (a) to select another person falling within paragraph (2) to investigate the complaint or matter; and
- (b) to notify the Commission of the person selected.

(5) Where a selection made in pursuance of a requirement under paragraph (4) has been notified to the Commission, the Chief Executive must appoint that person to investigate the complaint or matter if, but only if, the Commission notifies the Chief Executive that it approves the appointment of that person.

(6) Subject to paragraphs (7) and (8), the person appointed to investigate the complaint or matter must comply with any reasonable requirements as to the conduct of the investigation which may be imposed by the Commission as appear to it to be necessary.

(7) Where at any stage of an investigation of a complaint, recordable conduct matter or DSI matter the possibility of criminal proceedings arises, the Commission must not, under paragraph (6), impose any requirement relating to the obtaining or preservation of evidence of a criminal offence without first obtaining the consent of the Director of Public Prosecutions.

(8) The Commission must not, under paragraph (6), impose any requirement relating to the resources to be made available by the Chief Executive for the purposes of an investigation without first consulting the Chief Executive and having regard to any representations the Chief Executive may make.

Investigations managed by the Commission

43.—(1) This regulation applies where the Commission has determined that it should manage the investigation by the Chief Executive of any complaint, recordable conduct matter or DSI matter.

(2) Paragraphs (2) to (5) of regulation 42 (investigations supervised by the Commission) apply as they apply in the case of an investigation which the Commission has determined is one that it should supervise.

(3) The person appointed to investigate the complaint or matter is, in relation to that investigation, under the direction and control of the Commission.

Investigations by the Commission itself

44.—(1) This regulation applies where the Commission has determined that it should itself carry out the investigation of a complaint, recordable conduct matter or DSI matter.

(2) The Commission must designate both—

- (a) a member of the Commission’s staff to take charge of the investigation on behalf of the Commission; and
- (b) all such other members of the Commission’s staff as are required by the Commission to assist that member.

(3) A member of the Commission’s staff who—

- (a) is designated under paragraph (2) in relation to any investigation; but
- (b) does not already, by virtue of section 97(8) (police officers engaged on service outside their force) of the Police Act 1996 have all the powers and privileges of a constable throughout England and Wales and the adjacent United Kingdom waters,

has, for the purposes of the carrying out of the investigation and all purposes connected with it, all those powers and privileges throughout England and Wales and those waters.

(4) A member of the Commission’s staff who is not a constable is not, as a result of paragraph (3), to be treated as being in police service for the purposes of—

- (a) section 280 (police service) of the Trade Union and Labour Relations (Consolidation) Act 1992(a); or
- (b) section 200 (police officers) of the Employment Rights Act 1996(b).

(5) References in this regulation to the powers and privileges of a constable—

- (a) are references to any power or privilege conferred by or under any enactment (including one passed after the making of these Regulations) on a constable; and
- (b) have effect as if every such power were exercisable, and every such privilege existed, throughout England and Wales and the adjacent United Kingdom waters (whether or not that is the case apart from this regulation).

(6) In this regulation “United Kingdom waters” means the sea and other waters within the seaward limits of the United Kingdom’s territorial sea.

Investigations by the Commission: power to serve an information notice

45.—(1) The Commission may serve upon any person an information notice requiring the person to provide it with information that it reasonably requires for the purposes of an investigation in accordance with regulation 44.

(2) But an information notice must not require a person—

- (a) to provide information that might incriminate the person;
- (b) to provide an item subject to legal privilege within the meaning of the Police and Criminal Evidence Act 1984 (see section 10 of that Act);
- (c) to make a disclosure that would be prohibited by any of Part 1 of the Regulation of Investigatory Powers Act 2000 or Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016;
- (d) to provide information that was provided to the person by, or by an agency of, the government of a country or territory outside the United Kingdom where that government does not consent to the disclosure of the information.

(3) Neither must an information notice require a postal or telecommunications operator to provide communications data.

(a) 1992 c. 52.

(b) 1996 c. 18.

(4) In paragraph (3) “communications data”, “postal operator” and “telecommunications operator” have the same meanings as in the Investigatory Powers Act 2016 (see sections 261 and 262 of that Act).

(5) An information notice must—

- (a) specify or describe the information that is required by the Commission and the form in which it must be provided;
- (b) specify the period within which the information must be provided;
- (c) give details of the right of appeal against the information notice under regulation 47.

(6) The period specified under paragraph (5)(b) must not end before the end of the period within which an appeal can be brought against the notice and, if such an appeal is brought, the information need not be provided pending the determination or withdrawal of the appeal.

(7) The Commission may cancel an information notice by written notice to the person on whom it was served.

Failure to comply with an information notice

46.—(1) If a person who has received an information notice—

- (a) fails or refuses to provide information required by the notice; or
- (b) knowingly or recklessly provides information in response to the notice that is false in a material respect,

the Commission may certify in writing to the High Court that the person has failed to comply with the information notice.

(2) The High Court may then inquire into the matter and, after hearing any witness who may be produced against or on behalf of the person, and after hearing any statement offered in defence, deal with the person as if the person had committed a contempt of court.

Appeals against information notices

47.—(1) A person on whom an information notice is served may appeal against the notice to the First-tier Tribunal on the ground that the notice is not in accordance with the law.

(2) If the Tribunal considers that the notice is not in accordance with the law—

- (a) it must quash the notice; and
- (b) it may give directions to the Commission in relation to the service of a further information notice.

Sensitive information: restriction on further disclosure

48.—(1) Where the Commission receives information within paragraph (2) under an information notice, it must not disclose (whether under regulation 7, 13 or 14 or otherwise) the information, or the fact that it has received it, unless the relevant authority consents to the disclosure.

(2) The information is—

- (a) intelligence service information;
- (b) protected information relating to a relevant warrant; or
- (c) information obtained (directly or indirectly) from a government department which, at the time it is provided to the Commission, is identified by the department as information the disclosure of which may, in the opinion of the relevant authority, cause damage to—
 - (i) national security or international relations; or
 - (ii) the economic interests of the United Kingdom or any part of the United Kingdom.

(3) Where the Commission discloses to another person information within paragraph (2), or the fact that it has received it, that person must not disclose that information or that fact unless the relevant authority consents to the disclosure.

(4) In this regulation—

“government department” means a department of Her Majesty’s Government but does not include—

- (a) the Security Service;
- (b) the Secret Intelligence Service; or
- (c) the Government Communications Headquarters (“GCHQ”);

“intelligence service information” means information which was obtained (directly or indirectly) from an intelligence service or which related to an intelligence service;

“intelligence service” means—

- (a) the Security Service;
- (b) the Secret Intelligence Service;
- (c) GCHQ; or
- (d) any part of Her Majesty’s forces (within the meaning of the Armed Forces Act 2006^(a)), or of the Ministry of Defence, which engages in intelligence activities;

“Minister of the Crown” includes the Treasury;

“protected information”, in relation to a relevant warrant, means information relating to any of the matters mentioned in section 57(4) of the Investigatory Powers Act 2016 in relation to the warrant;

“relevant authority” means—

- (a) in the case of intelligence service information obtained from the Security Service, the Director-General of the Security Service;
- (b) in the case of intelligence service information obtained from the Secret Intelligence Service, the Chief of the Secret Intelligence Service;
- (c) in the case of intelligence service information obtained from GCHQ, the Director of GCHQ;
- (d) in the case of intelligence service information obtained from any part of Her Majesty’s forces, or of the Ministry of Defence, which engages in intelligence activities, the Secretary of State;
- (e) in the case of protected information relating to a relevant warrant, the person to whom the warrant is or was addressed;
- (f) in the case of information within paragraph (2)(c)—
 - (i) the Secretary of State; or
 - (ii) the Minister of the Crown in charge of the government department from which the information was obtained (if that Minister is not a Secretary of State);

“relevant warrant” means—

- (a) a warrant under Chapter 1 of Part 2 of the Investigatory Powers Act 2016; or
- (b) a warrant under Chapter 1 of Part 6 of that Act.

Combining and splitting investigations

49.—(1) The Chief Executive may, where carrying out an investigation on the Chief Executive’s own behalf—

- (a) combine that investigation with another such investigation; or
- (b) split that investigation into two or more such separate investigations,

(a) 2006 c. 52.

if the Chief Executive considers that it is more efficient and effective, or is otherwise in the public interest, to do so.

- (2) Where the Commission is supervising, managing or carrying out an investigation, it may—
- (a) combine that investigation with another investigation; or
 - (b) split that investigation into two or more separate investigations,

if it considers that it is more efficient and effective, or is otherwise in the public interest, to do so.

(3) The Commission must consult the Chief Executive before taking any action under paragraph (2) in relation to a supervised or managed investigation.

- (4) Nothing in this regulation prevents the Commission from determining that—
- (a) where an investigation is split into two or more separate investigations, those investigations may take different forms;
 - (b) two or more separate investigations which take different forms (including an investigation being carried out by the Chief Executive on the Chief Executive's own behalf) may be combined into a single investigation.

Relinquishing the Commission's supervision or management of an investigation

50.—(1) This regulation applies where the Commission relinquishes—

- (a) the management of an investigation in favour of a supervised investigation or an investigation by the Chief Executive on the Chief Executive's own behalf; or
- (b) the supervision of an investigation in favour of an investigation by the Chief Executive on the Chief Executive's own behalf.

(2) Where this regulation applies, and subject to paragraph (3), the Commission must—

- (a) notify the Chief Executive, the complainant, any interested person within the meaning of regulation 14 (duty to provide information for other persons) and the person complained against of its decision, and the reasons for that decision; and
- (b) send to the Chief Executive any documentation and evidence gathered during its investigations as will assist the Chief Executive to carry out the Chief Executive's functions under these Regulations.

(3) Nothing in paragraph (2)(a) requires the Commission to make a notification to the person complained against if it is of the opinion that that might prejudice any criminal investigation or proceedings or would be contrary to the public interest.

Circumstances in which an investigation or other procedure may be suspended

51.—(1) The Commission may suspend any investigation or other procedure under these Regulations which would, if it were to continue, prejudice any criminal investigation or proceedings.

(2) The Chief Executive may, subject to paragraph (3), suspend—

- (a) an investigation by the Chief Executive on the Chief Executive's own behalf;
- (b) an investigation under the supervision of the Commission; or
- (c) any other procedure under these Regulations,

which would, if it were to continue, prejudice any criminal investigation or proceedings.

(3) The Commission may direct that any investigation or other procedure under these Regulations which is liable to be suspended under paragraph (2) is to continue if it is of the view that it is in the public interest to make such a direction.

(4) The Commission must consult the Chief Executive before making such a direction.

Resumption of investigation after criminal proceedings

52.—(1) Where the investigation of a conduct matter or DSI matter has been suspended until the conclusion of criminal proceedings, the Commission or Chief Executive, as the case may be, must start or resume the investigation after the conclusion of those proceedings.

(2) Where the investigation of a complaint has been suspended until the conclusion of criminal proceedings, and the complainant has not indicated after the conclusion of those proceedings the wish that the investigation start or be resumed, the Commission or Chief Executive, as the case may be, must take the steps set out in paragraph (3).

(3) The Commission or Chief Executive must take all reasonable steps to contact the complainant to ascertain whether the complainant wants the investigation to start or be resumed.

(4) If the complainant indicates the wish for the investigation to start or be resumed, the Commission or Chief Executive must start or resume the investigation.

(5) If—

- (a) the complainant indicates the wish that the investigation not be started or not be resumed, or
- (b) the complainant fails to reply within a period of 28 days commencing on the day after the date of a letter sent to the complainant by the Commission or Chief Executive,

the Commission or Chief Executive, as the case may be, must determine whether it is in the public interest for the complaint to be treated as a recordable conduct matter.

(6) If the Commission or Chief Executive determines that it is not in the public interest for the complaint to be treated as a recordable conduct matter, the provisions of these Regulations cease to apply to the complaint.

(7) If the Commission or Chief Executive determines that it is in the public interest for the complaint to be treated as a recordable conduct matter, the provisions of these Regulations continue to apply to the matter.

(8) Subject to paragraph (9), the Commission or Chief Executive must notify the person complained against if paragraph (6) or (7) applies.

(9) Nothing in paragraph (8) requires the Commission or Chief Executive to make a notification if the Commission or the Chief Executive, as the case may be, is of the opinion that that might prejudice any criminal investigation or proceedings or would be contrary to the public interest.

Special procedure: assessment of seriousness of conduct under investigation

53.—(1) If, during the course of an investigation of a complaint, it appears to the person investigating that there is an indication that a person to whose conduct the investigation relates may have—

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

the person investigating must certify the investigation as one subject to special requirements.

(2) If the person investigating a complaint certifies the investigation as one subject to special requirements, the person must, as soon as is reasonably practicable after doing so, make a severity assessment in relation to the conduct of the person concerned to which the investigation relates.

(3) The person investigating a recordable conduct matter must make a severity assessment in relation to the conduct to which the investigation relates—

- (a) as soon as is reasonably practicable after that person's appointment or designation; or
- (b) in the case of a matter recorded in accordance with regulations 67(5) or 72(2), as soon as is reasonably practicable after it is so recorded.

(4) For the purposes of this regulation a "severity assessment", in relation to conduct, means an assessment as to whether the conduct, if proved, would amount to misconduct or gross misconduct.

(5) An assessment under this regulation may only be made after consultation with the Chief Executive.

(6) On completing an assessment under this regulation, the person investigating the complaint or matter must give a notification to the person concerned that complies with paragraph (7).

(7) The notification must be in writing and state—

- (a) the conduct that is the subject matter of the allegation and how that conduct is alleged to fall below the Authority's standards;
- (b) that there is an investigation into the matter and the identity of the person investigating;
- (c) the assessment of the person investigating as to whether that conduct, if proved, would amount to misconduct or gross misconduct;
- (d) that the person concerned has the right to seek advice from the trade union or any other body representing the interests of the person concerned and of the effect of regulation 57 (LAPO friend); and
- (e) the effect of paragraph (8) and regulation 54 (duty to consider submissions from person whose conduct is being investigated).

(8) The person concerned or the person's LAPO friend has such a period as determined by the Chief Executive, starting with the day after which the notice is given under paragraph (7) (unless this period is extended by the person investigating), to provide any relevant statement or relevant document as the case may be.

(9) Paragraph (6) does not apply for so long as the person investigating the complaint or matter considers that giving the notification might prejudice—

- (a) the investigation; or
- (b) any other investigation (including, in particular, a criminal investigation).

(10) Where the person investigating a complaint or matter has made a severity assessment and considers it appropriate to do so, the person may revise the assessment.

(11) On revising a severity assessment, the person investigating the complaint or matter must, as soon as practicable, give the person concerned further written notice of the assessment of whether the conduct, if proved, would amount to misconduct or gross misconduct, as the case may be, and the reason for that assessment.

(12) The notice, whether given in accordance with paragraph (6) or (11), must be—

- (a) given to the person concerned in person;
- (b) left with some person at, or sent by recorded delivery to, the last known address of the person concerned; or
- (c) given to the person concerned in person by that person's LAPO friend where the LAPO friend has agreed with the Chief Executive to deliver the notice.

(13) In this regulation and regulations 54 to 57—

“the person concerned” means—

- (a) in relation to an investigation of a complaint, the LAPO in respect of whom it appears to the person investigating that there is the indication mentioned in paragraph (1);
- (b) in relation to an investigation of a recordable conduct matter, the LAPO to whose conduct the investigation relates;

“relevant document” means a document relating to a complaint or matter under investigation and includes such a document containing suggestions as to lines of inquiry to be pursued or witnesses to be interviewed;

“relevant statement” means an oral or written statement relating to a complaint or matter under investigation.

Duty to consider submissions from the person whose conduct is being investigated

54.—(1) This regulation applies to—

- (a) an investigation of a complaint that has been certified under regulation 53(1) as one subject to special requirements; or
 - (b) an investigation of a recordable conduct matter.
- (2) If before the expiry of the period determined by the Chief Executive under regulation 53(8)—
- (a) the person concerned provides the person investigating the complaint or matter with a relevant statement or a relevant document; or
 - (b) a LAPO friend provides that person with a relevant document,
- that person must consider the statement or document.

Interview of the person whose conduct is being investigated

- 55.**—(1) This regulation applies to an investigation to which regulation 54 applies.
- (2) Where the person investigating wishes to interview the person concerned as part of the investigation, the person investigating must, if reasonably practicable, agree a date and time for the interview with the person concerned.
- (3) Where no date and time is agreed under paragraph (2), the person investigating must specify a date and time for the interview.
- (4) Where a date and time is specified under paragraph (3) and—
- (a) the person concerned or that person’s LAPO friend will not be available at that time; and
 - (b) the person concerned proposes an alternative time which satisfies paragraph (5),
- the interview is postponed to the time proposed by the person concerned.
- (5) An alternative time must—
- (a) be reasonable; and
 - (b) fall before the end of the period of 5 working days beginning with the first working day after the day specified by the person investigating.
- (6) The person concerned must be given written notice of the date, time and place of the interview.
- (7) The person investigating must, in advance of the interview, provide the person concerned with such information as the person investigating considers appropriate in the circumstances of the case to enable the person concerned to prepare for the interview.
- (8) The person concerned must attend the interview.
- (9) A LAPO friend may not answer any questions asked of the person concerned during the interview.

Duty to provide certain information to the Chief Executive

- 56.**—(1) This regulation applies during the course of an investigation to which regulation 54 applies.
- (2) The person investigating the complaint or matter must supply the Chief Executive with such information in that person’s possession as the Chief Executive may reasonably request for the purpose mentioned in paragraph (3).
- (3) That purpose is determining whether—
- (a) the person concerned should be, or should remain, suspended from that person’s appointment as an officer of the Authority; or
 - (b) in relation to a person who has been seconded to the Authority to serve as an officer of the Authority, the secondment of the person concerned should cease to have effect, or continue to have effect.

LAPO friend

57.—(1) The person concerned may choose—

- (a) an officer of the Authority; or
- (b) an official of a trade union,

who is not otherwise involved in the matter to act as that person's LAPO friend.

(2) A LAPO friend may—

- (a) provide any relevant document to the person investigating in accordance with regulation 54(2)(b);
- (b) accompany the person concerned to any interview conducted under regulation 55;
- (c) advise the person concerned throughout proceedings under these Regulations; and
- (d) make representations to the Commission concerning any aspect of the proceedings under these Regulations.

Interview of an officer of the Authority during certain investigations

58.—(1) This regulation applies to an investigation of a complaint, recordable conduct matter or DSI matter which—

- (a) is carried out by the Chief Executive under the management of the Commission; or
- (b) is carried out by the Commission itself.

(2) Paragraph (3) prescribes the procedure to be followed in connection with an interview which—

- (a) is held with an officer of the Authority during the course of the investigation by the person investigating the complaint or matter; and
- (b) is not within regulation 55.

(3) Where the person investigating wishes to interview an officer of the Authority as part of an investigation, the person investigating must—

- (a) give written notice to that officer that the interview will take place in accordance with this regulation; and
- (b) if reasonably practicable, agree a date and time for the interview.

(4) Where no date and time is agreed under paragraph (3), the person investigating must specify a date and time for the interview.

(5) Where a date and time is specified under paragraph (4) and—

- (a) the relevant officer or the relevant officer's accompanying person will not be available at that time; and
- (b) the relevant officer proposes an alternative time which satisfies paragraph (6),

the interview is postponed to the time proposed by the relevant officer.

(6) An alternative time must—

- (a) be reasonable; and
- (b) fall before the end of the period of 5 working days beginning with the first working day after the day specified by the relevant investigator.

(7) The relevant officer must be given written notice of the date, time and place of the interview.

(8) The person investigating must, in advance of the interview, provide the relevant officer with such information as the person investigating considers appropriate in the circumstances of the case to enable the relevant officer to prepare for the interview.

(9) The relevant officer must attend the interview.

(10) An accompanying person may not answer any questions asked of the relevant officer during the interview.

(11) Where an accompanying person is an officer of the Authority, the Chief Executive must permit the accompanying person to use a reasonable amount of duty time for the purposes of this regulation.

(12) Nothing in this regulation applies to an interview of any person—

- (a) in relation to an investigation of a complaint, in respect of whom it appears to the investigator that there is a relevant indication; or
- (b) in relation to an investigation of a recordable conduct matter, to whose conduct the investigation relates.

(13) Nothing in this regulation prevents or restricts the holding of interviews to which this regulation does not apply during the course of any investigation under these Regulations.

(14) In this regulation—

“accompanying person” means any person nominated by the relevant officer and who is not otherwise involved in the matter;

“relevant indication” means an indication that a person to whose conduct the investigation relates may have—

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

“relevant officer” means an officer of the Authority given notice under paragraph (3)(a).

Restrictions on proceedings pending the conclusion of an investigation

59.—(1) No criminal or disciplinary proceedings may be brought in relation to any matter which is the subject of an investigation in accordance with the provisions of these Regulations until—

- (a) the Chief Executive has certified the case as a special case under regulation 61(3) or 63(3); or
- (b) a report on that investigation has been submitted to the Commission or to the Chief Executive under regulation 68 (final reports on investigations: complaints and conduct matters) or 71 (final reports on investigations: DSI matters).

(2) Nothing in this regulation prevents the bringing of criminal or disciplinary proceedings in respect of any conduct at any time after the discontinuance of the investigation in accordance with the provisions of these Regulations which relate to that conduct.

(3) The restrictions imposed by this regulation in relation to the bringing of criminal proceedings do not apply to the bringing of criminal proceedings by the Director of Public Prosecutions in any case in which it appears to the Director that there are exceptional circumstances which make it undesirable to delay the bringing of such proceedings.

Accelerated procedure in special cases

60.—(1) If, at any time before the completion of the investigation, the person investigating a complaint or recordable conduct matter believes that the Chief Executive would, on consideration of the matter, be likely to consider that the special conditions are satisfied, the person must proceed in accordance with the following provisions of this paragraph.

(2) If the person was appointed under regulation 41 (investigations by the Chief Executive on the Chief Executive’s own behalf), the person must submit to the Chief Executive—

- (a) a statement of that person’s belief and the grounds for it; and
- (b) a written report on the investigation to that point,

and if the person was appointed following a determination made by the Commission under regulation 36 the person must send a copy of the statement and the report to the Commission.

(3) If the person was appointed under regulation 42 or 43 (investigations supervised or managed by the Commission) or designated under regulation 44 (investigations by the Commission itself), the person must submit to the Chief Executive—

- (a) a statement of that person's belief and the grounds for it; and
- (b) a written report on the investigation to that point,

and must send a copy of the statement and the report to the Commission.

(4) A person submitting a report under this regulation is not prevented by any obligation of secrecy imposed by any rule of law or otherwise from including all such matters in the report as that person thinks fit.

(5) A statement and report may be submitted under this regulation whether or not a previous statement and report have been submitted, but a second or subsequent statement and report may be submitted only if the person submitting them has grounds to believe that the Chief Executive will reach a different determination under regulation 61(2) or 63(2).

(6) After submitting a report under this regulation, the person investigating the complaint or recordable conduct matter must continue the investigation to such extent as that person considers appropriate.

(7) The special conditions are that—

- (a) there is sufficient evidence, in the form of written statements or other documents, to establish on the balance of probabilities that conduct to which the investigation relates constitutes gross misconduct; and
- (b) it is in the public interest for the person whose conduct it is to cease to be a LAPO without delay.

(8) In regulations 61 to 64—

- (a) "special report" means a report submitted under this regulation; and
- (b) "special conditions" has the meaning given by paragraph (7) of this regulation.

Special cases: investigations managed or carried out by the Commission: action by the Chief Executive

61.—(1) This regulation applies where—

- (a) a statement and special report on an investigation carried out under the management of the Commission; or
- (b) a statement and special report on an investigation carried out by a person designated by the Commission,

are submitted to the Chief Executive under regulation 60(3).

(2) The Chief Executive must determine whether the special conditions are satisfied.

(3) If the Chief Executive determines that the special conditions are satisfied, the Chief Executive must—

- (a) certify the case as a special case for the purposes of procedures for the taking of disciplinary proceedings; and
- (b) take such steps as are required by those procedures in relation to a case so certified,

unless the Chief Executive considers that the circumstances are such as to make it inappropriate to do so.

(4) The Chief Executive must notify the Commission of a certification under paragraph (3).

(5) If the Chief Executive determines—

- (a) that the special conditions are not satisfied; or
- (b) that, although those conditions are satisfied, the circumstances are such as to make it inappropriate at present to bring disciplinary proceedings,

the Chief Executive must submit to the Commission a memorandum under this paragraph.

(6) The memorandum required to be submitted under paragraph (5) is one which—

- (a) notifies the Commission of the Chief Executive's determination that those conditions are not satisfied or, as the case may be, that they are so satisfied but the circumstances are such as to make it inappropriate at present to bring disciplinary proceedings; and
- (b) (in either case) sets out the Chief Executive's reasons for so determining.

Special cases: investigations managed or carried out by the Commission: action by the Commission

62.—(1) On receipt of a notification under regulation 61(4), the Commission must give a notification—

- (a) in the case of a complaint, to the complainant and to every person entitled to be kept properly informed in relation to the complaint under regulation 14; and
- (b) in the case of a recordable conduct matter, to every person entitled to be kept properly informed in relation to that matter under that regulation.

(2) The notification required by paragraph (1) is one setting out—

- (a) the findings of the special report;
- (b) the Chief Executive's determination under regulation 61(2); and
- (c) the action that the Chief Executive is required to take as a consequence of that determination.

(3) Regulation 16 (exceptions to the duty to keep the complainant informed and to provide information for other persons) has effect in relation to the duties imposed on the Commission by paragraph (1) as it has effect in relation to the duties imposed on the Commission by regulations 13 and 14.

(4) Except so far as may be otherwise prohibited by regulation 16, the Commission is entitled (notwithstanding any obligation of secrecy imposed by any rule of law or otherwise) to discharge the duty to give a person mentioned in paragraph (1) notification of the findings of the special report by sending that person a copy of that report.

(5) On receipt of a memorandum under regulation 61(5), the Commission must—

- (a) consider the memorandum;
- (b) determine, in the light of that consideration, whether or not to make a recommendation under regulation 64; and
- (c) if it thinks fit to do so, make a recommendation under that regulation.

(6) If the Commission determines not to make a recommendation under regulation 64, it must notify the Chief Executive and the person investigating the complaint or matter of its determination.

Special cases: other investigations: action by the Chief Executive

63.—(1) This paragraph applies where—

- (a) a statement and a special report on an investigation carried out by the Chief Executive on the Chief Executive's own behalf; or
- (b) a statement and a special report on an investigation carried out under the supervision of the Commission,

are submitted to the Chief Executive under regulation 60(2) or (3).

(2) The Chief Executive must determine whether the special conditions are satisfied.

(3) If the Chief Executive determines that the special conditions are satisfied, the Chief Executive must—

- (a) certify the case as a special case for the purposes of procedures for the taking of disciplinary proceedings; and
- (b) take such steps as are required by those procedures in relation to a case so certified,

unless the Chief Executive considers that the circumstances are such as to make it inappropriate to do so.

(4) Where—

- (a) the statement and report were required under regulation 60(2) to be copied to the Commission; or
- (b) the statement and report were submitted under regulation 60(3),

the Chief Executive must notify the Commission of a certification under paragraph (3).

(5) If the Chief Executive determines—

- (a) that the special conditions are not satisfied; or
- (b) that, although those conditions are satisfied, the circumstances are such as to make it inappropriate at present to bring disciplinary proceedings,

the Chief Executive must notify the person investigating the complaint or matter of the Chief Executive's determination.

(6) If the Chief Executive certifies a case under paragraph (3), the Chief Executive must give a notification—

- (a) in the case of a complaint, to the complainant and to every person entitled to be kept properly informed in relation to the complaint under regulation 14; and
- (b) in the case of a recordable conduct matter, to every person entitled to be kept properly informed in relation to that matter under that regulation.

(7) The notification required by paragraph (6) is one setting out—

- (a) the findings of the report;
- (b) the Chief Executive's determination under paragraph (2); and
- (c) the action that the Chief Executive is required to take in consequence of that determination.

(8) Regulation 16 (exceptions to the duty to keep the complainant informed and to provide information for other persons) has effect in relation to the duties imposed on the Chief Executive by paragraph (6) as it has effect in relation to the duties imposed on the Chief Executive by regulations 13 and 14.

(9) Except so far as may be otherwise prohibited by regulation 16, the Chief Executive is entitled (notwithstanding any obligation of secrecy imposed by any rule of law or otherwise) to discharge the duty to give a person mentioned in paragraph (6) notification of the findings of the special report by sending that person a copy of that report.

Special cases: recommendation or direction of the Commission

64.—(1) Where the Chief Executive has submitted, or is required to submit, a memorandum to the Commission under regulation 61(5), the Commission may make a recommendation to the Chief Executive that the Chief Executive should certify the case under regulation 61(3).

(2) If the Commission determines to make a recommendation under this regulation, it must give a notification—

- (a) in the case of a complaint, to the complainant and to every person entitled to be kept properly informed in relation to the complaint under regulation 14; and
- (b) in the case of a recordable conduct matter, to every person entitled to be kept properly informed in relation to that matter under that regulation.

(3) The notification required by paragraph (2) is one setting out—

- (a) the findings of the special report; and
- (b) the Commission's recommendation under this regulation.

(4) Regulation 16 (exceptions to the duty to keep the complainant informed and to provide information for other persons) has effect in relation to the duties imposed on the Commission by

paragraph (2) as it has effect in relation to the duties imposed on the Commission by regulations 13 and 14.

(5) Except so far as may be otherwise prohibited by regulation 16, the Commission is entitled (notwithstanding any obligation of secrecy imposed by any rule of law or otherwise) to discharge the duty to give a person mentioned in paragraph (2) notification of the findings of the special report by sending that person a copy of the report.

(6) The Chief Executive must—

- (a) notify the Commission whether the Chief Executive accepts the recommendation; and
- (b) if the Chief Executive does, certify the case and proceed accordingly.

(7) If, after the Commission has made a recommendation under this regulation, the Chief Executive does not certify the case under regulation 61(3)—

- (a) the Commission may direct the Chief Executive so to certify it; and
- (b) the Chief Executive must comply with any such direction and proceed accordingly.

(8) Where the Commission gives the Chief Executive a direction under this regulation, it must supply the Chief Executive with a statement of its reasons for doing so.

(9) The Commission may at any time withdraw a direction given under this regulation.

(10) The Chief Executive must keep the Commission informed of whatever action the Chief Executive takes in response to a recommendation or direction.

(11) Where—

- (a) the Commission makes a recommendation under this regulation in the case of an investigation of a complaint; and
- (b) the Chief Executive notifies the Commission that the recommendation has been accepted,

the Commission must notify the complainant and every person entitled to be kept properly informed in relation to the complaint under regulation 14 of that fact and of the steps that have been, or are to be, taken by the Chief Executive to give effect to it.

(12) Where in the case of an investigation of a complaint the Chief Executive—

- (a) notifies the Commission that the Chief Executive does not accept the recommendation made by the Commission under this regulation; or
- (b) fails to certify the case under regulation 61(3) and to proceed accordingly,

the Commission must determine what (if any) further steps to take under this regulation.

(13) The Commission must notify the complainant and every person entitled to be kept properly informed in relation to the complaint under regulation 14—

- (a) of any determination under paragraph (12) not to take further steps under this regulation; and
- (b) where it determines under that paragraph to take further steps under that paragraph, of the outcome of the taking of those steps.

Power to discontinue an investigation

65.—(1) The Commission may by order require the discontinuance of the investigation of a complaint or matter if (whether on the application of the Chief Executive or otherwise) it appears to the Commission that—

- (a) the complaint or matter is of a description specified in paragraph (9); and
- (b) discontinuance of the investigation is within the Commission's power.

(2) The Chief Executive may discontinue an investigation if it appears to the Chief Executive that—

- (a) the complaint or matter is of a description specified in paragraph (9); and
- (b) discontinuance of the investigation is not within the Commission's power.

(3) Before discontinuing an investigation or applying to the Commission for an order requiring the discontinuance of an investigation, the Chief Executive must—

- (a) write to the complainant at the complainant's last known address—
 - (i) inviting the complainant to make representations in relation to the matter; and
 - (ii) allowing the complainant a period of 28 days, commencing on the day after the date of the letter, to do so; and
- (b) have regard to any representations made by the complainant.

(4) Any application by the Chief Executive to the Commission for an order requiring the discontinuance of an investigation must be in writing and must be accompanied by—

- (a) a copy of the complaint; and
- (b) a memorandum from the Chief Executive containing a summary of the investigation undertaken so far and explaining the reasons for the application.

(5) The Chief Executive must—

- (a) send the complainant a copy of any such application on the same day as the day on which the application is sent to the Commission; and
- (b) supply any further information requested by the Commission for the purpose of considering that application.

(6) The Commission must not require the discontinuance of an investigation in a case where there has been no application to do so by the Chief Executive unless it has consulted with the Chief Executive.

(7) Before requiring the discontinuance of an investigation under paragraph (1) in a case where there has been no application to do so by the Chief Executive, the Commission must—

- (a) write to the complainant at the complainant's last known address—
 - (i) inviting the complainant to make representations in relation to the matter; and
 - (ii) allowing the complainant a period of 28 days, commencing on the day after the date of the letter, to do so; and
- (b) have regard to any representations made by the complainant.

(8) For the purposes of this regulation—

- (a) discontinuance of the investigation of a complaint is within the Commission's power if
 - (i) the investigation is being undertaken by the Chief Executive on the Chief Executive's own behalf and the complaint is one required to be referred to the Commission under regulation 21; or
 - (ii) the investigation is under the supervision or management of the Commission;
- (b) discontinuance of the investigation of a matter other than a complaint is within the Commission's power if the investigation is under the supervision or management of the Commission.

(9) For the purposes of paragraphs (1) and (2), a complaint or matter is of a description specified in this paragraph if it is one—

- (a) in which the complainant refuses to co-operate to the extent that the relevant body considers that it is not reasonably practicable to continue the investigation;
- (b) which the Chief Executive has determined is suitable for local resolution;
- (c) which the relevant body considers is vexatious, oppressive or otherwise an abuse of the procedures for dealing with complaints, conduct matters or DSI matters;
- (d) which is repetitious, as defined in regulation 24(8) or 30; or
- (e) which the relevant body otherwise considers is such as to make it not reasonably practicable to proceed with the investigation.

(10) For the purposes of paragraph (9) "relevant body" means—

- (a) the Commission, in a case where discontinuance is within the Commission's power in accordance with paragraph (8); and
- (b) the Chief Executive, in any other case.

Discontinuance of an investigation: notifications, appeals etc.

66.—(1) The Commission must not discontinue an investigation that is being carried out in accordance with regulation 44 (investigations by the Commission itself) except in a cases where the complaint, conduct matter or DSI matter under investigation is of a description specified in regulation 65(9).

(2) Where the Commission makes an order under regulation 65(1) or discontinues an investigation being carried out in accordance with regulation 44, it must give notification of the discontinuance—

- (a) to the Chief Executive;
- (b) to every person entitled to be kept properly informed in relation to the subject matter of the investigation under regulation 14; and
- (c) in a case where the investigation that is discontinued is an investigation of a complaint, to the complainant.

(3) Where the Chief Executive discontinues an investigation under regulation 65(2), the Chief Executive must give notification of the discontinuance—

- (a) to every person entitled to be kept properly informed in relation to the subject matter of the investigation under regulation 14; and
- (b) in a case where the investigation that is discontinued is an investigation of a complaint, to the complainant.

(4) Where an investigation of a complaint, recordable conduct matter or DSI matter is discontinued in accordance with an order under regulation 65(1)—

- (a) the Commission may give the Chief Executive directions in accordance with paragraph (5); and
- (b) the Commission may itself take any such steps of a description specified in paragraph (8) (with the exception of the step in paragraph (8)(c)) as it considers appropriate for purposes connected with the discontinuance of the investigation,

but otherwise neither the Chief Executive nor the Commission may take any further action in accordance with the provisions of these Regulations in relation to that complaint or matter.

(5) A direction given to the Chief Executive by the Commission under paragraph (4)(a) may—

- (a) require the Chief Executive to produce an investigation report on the discontinued investigation under regulation 68 and to take any subsequent steps under these Regulations;
- (b) where the investigation concerned a complaint, require the Chief Executive to disapply the requirements of these Regulations as respects that complaint;
- (c) in a case within regulation 65(9)(b), require the Chief Executive to subject the complaint to local resolution;
- (d) direct the Chief Executive to handle the matter in whatever manner (if any) the Chief Executive thinks fit.

(6) The Chief Executive must comply with any directions given under paragraph (5).

(7) Where an investigation of a complaint, recordable conduct matter or DSI matter is discontinued in accordance with regulation 65(2)—

- (a) the Chief Executive may take any such steps of a description specified in paragraph (8) as the Chief Executive considers appropriate for purposes connected with the discontinuance of the investigation; but

- (b) otherwise neither the Chief Executive nor the Commission may take any further action in accordance with the provisions of these Regulations in relation to that complaint or matter.
- (8) For the purposes of paragraphs (4)(b) and (7)(a), the steps are—
- (a) to produce an investigation report on the discontinued investigation and take any subsequent steps under these Regulations;
 - (b) where the investigation concerned a complaint, to disapply the requirements of these Regulations as respects that complaint;
 - (c) to subject the complaint to local resolution;
 - (d) to handle the matter in whatever manner the Chief Executive or (as the case may be) the Commission thinks fit.
- (9) The complainant may appeal to the Commission against any decision by the Chief Executive under regulation 65(2) to discontinue the investigation of the complaint.
- (10) On an appeal under this regulation, the Commission must—
- (a) determine whether any decision taken by the Chief Executive under regulation 65 or this regulation should have been taken in the case in question; and
 - (b) if the Commission finds in the complainant's favour, give such directions as it thinks appropriate to the Chief Executive as to the action to be taken for investigating the complaint;
- and the Chief Executive must comply with any such directions.

Procedure where a conduct matter is revealed during investigation of a DSI matter

67.—(1) If during the course of an investigation of a DSI matter it appears to a person appointed under regulation 43 (investigations managed by the Commission) or designated under regulation 44 (investigations by the Commission itself) that there is an indication that a LAPO may have—

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

the appointed or designated person must make a submission to that effect to the Commission.

(2) If, after considering a submission under paragraph (1), the Commission determines that there is such an indication, it must—

- (a) notify the Chief Executive of that determination; and
- (b) send to the Chief Executive 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 39 (investigations by the Chief Executive on the Chief Executive's own behalf) or 40 (investigations supervised by the Commission) that there is an indication that a LAPO may have—

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

the appointed person must make a submission to that effect to the Chief Executive.

(4) If, after considering a submission under paragraph (3), the Chief Executive determines that there is such an indication, the Chief Executive must—

- (a) notify the Commission of that determination; and
- (b) send to it a copy of the submission under paragraph (3).

(5) Where the Chief Executive—

- (a) is notified of a determination by the Commission under paragraph (2); or
- (b) makes a determination under paragraph (4),

the Chief Executive must record the matter under regulation 29 as a conduct matter.

(6) Where a DSI matter is recorded under regulation 29 as a conduct matter by virtue of paragraph (5)—

- (a) the person investigating the DSI matter must (subject to any determination made by the Commission under regulation 38(5)) continue the investigation as if appointed or designated to investigate the conduct matter; and
- (b) the other provisions of these Regulations apply in relation to that matter accordingly.

PART 7

REPORTS AND RECOMMENDATIONS

Final reports on investigations: complaints and conduct matters

68.—(1) This regulation applies on the completion of an investigation of—

- (a) a complaint; or
- (b) a conduct matter (including a matter that was formerly a DSI matter but has been recorded as a conduct matter in pursuance of regulation 67(5)).

(2) A person appointed under regulation 41 (investigations by the Chief Executive on the Chief Executive's own behalf) must submit a report on that person's investigation to the Chief Executive.

(3) A person appointed under regulation 42 (investigations supervised by the Commission) or 43 (investigations managed by the Commission) must—

- (a) submit a report on that investigation to the Commission; and
- (b) send a copy of that report to the Chief Executive.

(4) A person designated under regulation 44 (investigations by the Commission itself) as the person in charge of an investigation by the Commission itself must submit a report on it to the Commission.

(5) A person submitting a report under this regulation is not prevented by any obligation of secrecy imposed by any rule of law or otherwise from including all such matters in that person's report as that person thinks fit.

(6) For the purposes of a report on an investigation to which regulation 54 (special procedure cases) applies, on completion of the investigation the report must—

- (a) provide an accurate summary of the evidence;
- (b) attach or refer to any relevant documents; and
- (c) indicate the opinion of the person investigating as to whether there is a case to answer in respect of misconduct or gross misconduct or whether there is no case to answer.

(7) A person who has submitted a report under this regulation on an investigation to which regulation 54 applies must supply the Chief Executive with such copies of further documents or other items in that person's possession as the Chief Executive may request.

(8) The Chief Executive may only make a request in respect of a copy of a document or other item if the Chief Executive—

- (a) considers that the document or item is of relevance to the investigation; and
- (b) requires a copy of the document or the item for either or both of the purposes mentioned in paragraph (9).

(9) Those purposes are—

- (a) complying with any obligation which the Chief Executive has in respect of any disciplinary proceedings in relation to any person to whose conduct the investigation related;

- (b) ensuring that any such person receives a fair hearing at any disciplinary proceedings in respect of any such conduct of that person.

Action by the Commission in response to an investigation report under regulation 68

69.—(1) This regulation applies where—

- (a) a report on an investigation carried out under the management of the Commission is submitted to it under paragraph (3) of regulation 68; or
- (b) a report on an investigation carried out by a person designated by the Commission is submitted to it under paragraph (4) of that regulation.

(2) On receipt of the report, the Commission must—

- (a) if it appears that the Chief Executive has not already been sent a copy of the report, send a copy of the report to the Chief Executive;
- (b) determine whether the conditions set out in paragraphs (3) and (4) are satisfied in respect of the report;
- (c) if it determines that those conditions are so satisfied, notify the Director of Public Prosecutions of the determination and send the Director a copy of the report; and
- (d) notify the Chief Executive and the persons mentioned in paragraph (7) of its determination under paragraph (b) and of any action taken by it under paragraph (c).

(3) The first condition is that the report indicates that a criminal offence may have been committed by a person to whose conduct the investigation related.

(4) The second condition is that the circumstances are such that, in the opinion of the Commission, it is appropriate for the matters dealt with in the report to be considered by the Director of Public Prosecutions.

(5) The Director of Public Prosecutions must notify the Commission of any decision of the Director to take, or not to take, action in respect of the matters dealt with in any report a copy of which has been sent to the Director under paragraph (2)(c).

(6) The Commission must notify the persons mentioned in paragraph (7) if criminal proceedings are brought against any person by the Director of Public Prosecutions in respect of any matters dealt with in a report copied to the Director under paragraph (2)(c).

(7) The persons are—

- (a) in the case of a complaint, the complainant and every person entitled to be kept properly informed in relation to the complaint under regulation 14 (duty to provide information for other persons); and
- (b) in the case of a recordable conduct matter, every person entitled to be kept properly informed in relation to that matter under that regulation.

(8) On receipt of the report, the Commission must also notify the Chief Executive that the Chief Executive must determine—

- (a) whether any person to whose conduct the investigation related has a case to answer in respect of misconduct or gross misconduct or has no case to answer;
- (b) whether or not any such person's performance is unsatisfactory;
- (c) what action (if any) the Chief Executive is required to, or will in the Chief Executive's discretion, take in respect of the matters dealt with in the report; and
- (d) what other action (if any) the Chief Executive will in the Chief Executive's discretion take in respect of those matters.

(9) On receipt of a notification under paragraph (8) the Chief Executive must make those determinations and submit a memorandum to the Commission which—

- (a) sets out the determinations the Chief Executive has made; and
- (b) if the Chief Executive has decided in relation to any person whose conduct is the subject matter of the report that disciplinary proceedings or unsatisfactory performance

proceedings should not be brought against that person, sets out the Chief Executive's reasons for so deciding.

(10) On receipt of a memorandum under paragraph (9), the Commission must—

- (a) consider the memorandum and whether the Chief Executive has made the determinations under paragraph (8) that the Commission considers appropriate in respect of the matters dealt with in the report;
- (b) determine, in the light of its consideration of those matters, whether or not to make recommendations under regulation 75 (duties with respect to disciplinary proceedings etc.); and
- (c) make such recommendations (if any) under that regulation as it thinks fit.

(11) On the making of a determination under paragraph (10)(b) the Commission must give a notification—

- (a) in the case of a complaint, to the complainant and to every person entitled to be kept properly informed in relation to the complaint under regulation 14; and
- (b) in the case of a recordable conduct matter, to every person entitled to be kept properly informed in relation to that matter under that regulation.

(12) The notification required by paragraph (11) is one setting out—

- (a) the findings of the report;
- (b) the Commission's determination under paragraph (10)(b); and
- (c) the action which the Chief Executive is to be recommended to take as a consequence of the determination.

(13) Regulation 16 (exceptions to the duty to keep the complainant informed and to provide information for other persons) has effect in relation to the duties imposed on the Commission by paragraph (11) of this regulation as it has effect in relation to the duties imposed on the Commission by regulations 13 and 14.

(14) Subject to regulation 16, the Commission is entitled (notwithstanding any obligation of secrecy imposed by any rule of law or otherwise) to discharge the duty to give a person mentioned in paragraph (11) notification of the findings of the report by sending that person a copy of the report.

Action by the Chief Executive in response to an investigation report under regulation 68

70.—(1) This regulation applies where—

- (a) a report of an investigation is submitted to the Chief Executive in accordance with regulation 68(2); or
- (b) a copy of a report of an investigation carried out under the supervision of the Commission is sent to the Chief Executive in accordance with regulation 68(3).

(2) On receipt of the report or (as the case may be) the copy, the Chief Executive must—

- (a) determine whether the conditions set out in paragraphs (3) and (4) are satisfied in respect of the report;
- (b) if the Chief Executive determines that those conditions are so satisfied, notify the Director of Public Prosecutions of the determination and send the Director a copy of the report; and
- (c) notify the persons mentioned in paragraph (5) of the Chief Executive's determination under paragraph (a) and of any action taken by the Chief Executive under paragraph (b).

(3) The first condition is that the report indicates that a criminal offence may have been committed by a person to whose conduct the investigation related.

(4) The second condition is that the circumstances are such that, in the opinion of the Chief Executive, it is appropriate for the matters dealt with in the report to be considered by the Director of Public Prosecutions.

- (5) The persons are—
- (a) in the case of a complaint, the complainant and every person entitled to be kept properly informed in relation to the complaint under regulation 14 (duty to provide information for other persons); and
 - (b) in the case of a recordable conduct matter, every person entitled to be kept properly informed in relation to that matter under that regulation.
- (6) In the case of a report falling within paragraph (1)(b) which relates to a recordable conduct matter, the Chief Executive must also notify the Commission of the Chief Executive's determination under paragraph (2)(a).
- (7) On receipt of a notification that the Chief Executive has determined that the conditions in paragraph (3) and (4) are not satisfied in respect of the report, the Commission must—
- (a) make its own determination as to whether those conditions are so satisfied; and
 - (b) if it determines that they are so satisfied, direct the Chief Executive to notify the Director of Public Prosecutions of the Commission's determination and send the Director a copy of the report.
- (8) The Chief Executive must comply with any direction given to the Chief Executive under paragraph (7).
- (9) The Director of Public Prosecutions must notify the Chief Executive of any decision of the Director to take, or not to take, action in respect of the matters dealt with in any report a copy of which has been sent to the Director under paragraph (2)(b) or following a direction by the Commission under paragraph (7).
- (10) The Chief Executive must notify the persons mentioned in paragraph (5) if criminal proceedings are brought against any person by the Director of Public Prosecutions in respect of any matters dealt with in a report copied to the Director under paragraph (2)(b) or following a direction by the Commission under paragraph (7).
- (11) On receipt of the report or (as the case may be) of the copy, the Chief Executive must note the contents of the report and determine—
- (a) whether any person to whose conduct the investigation related has a case to answer, or has no case to answer, in respect of misconduct or gross misconduct;
 - (b) whether or not any such person's performance is unsatisfactory;
 - (c) what action (if any) the Chief Executive is required to, or will in the Chief Executive's discretion, take in respect of the matters dealt with in the report; and
 - (d) what other action (if any) the Chief Executive will in the Chief Executive's discretion take in respect of those matters.
- (12) On the making of the determinations under paragraph (11) the Chief Executive must give a notification—
- (a) in the case of a complaint, to the complainant and to every person entitled to be kept properly informed in relation to the complaint under regulation 14; and
 - (b) in the case of a recordable conduct matter, to every person entitled to be kept properly informed in relation to that matter under that regulation.
- (13) The notification required by paragraph (12) is one setting out—
- (a) the findings of the report;
 - (b) the determinations the Chief Executive has made under paragraph (11); and
 - (c) the complainant's right of appeal under regulation 73 (appeals with respect to an investigation).
- (14) Regulation 16 (exceptions to the duty to keep the complainant informed and to provide information for other persons) has effect in relation to the duties imposed on the Chief Executive by paragraph (12) of this regulation as it has effect in relation to the duties imposed on the Chief Executive by regulations 13 and 14.

(15) Subject to regulation 16, the Chief Executive is entitled (notwithstanding any obligation of secrecy imposed by any rule of law or otherwise) to discharge the duty to give a person mentioned in paragraph (12) notification of the findings of the report by sending that person a copy of the report.

Final reports on investigations: DSI matters

71.—(1) This regulation applies on the completion of an investigation of a DSI matter in respect of which neither the Commission nor the Chief Executive has made a determination under regulation 67(2) or (4) (procedure where a conduct matter is revealed during investigation of a DSI matter).

(2) The person investigating must—

- (a) submit a report on the investigation to the Commission; and
- (b) send a copy of that report to the Chief Executive.

(3) A person submitting a report under this regulation is not prevented by any obligation of secrecy imposed by any rule of law or otherwise from including all such matters in the report as that person thinks fit.

(4) On receipt of the report, the Commission must determine whether the report indicates that a LAPO may have—

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

Action by the Commission in response to an investigation report under regulation 71

72.—(1) If the Commission determines under regulation 71(4) that the report indicates that a LAPO may have—

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

it must notify the Chief Executive and, if it appears that the Chief Executive has not already been sent a copy of the report, send a copy of the report to the Chief Executive.

(2) Where the Chief Executive is notified of a determination by the Commission under paragraph (1), the Chief Executive must record the matter under regulation 29 as a conduct matter.

(3) Where a DSI matter is recorded under regulation 29 as a conduct matter by virtue of paragraph (2)—

- (a) the person investigating the DSI matter must (subject to any determination made by the Commission under regulation 38(5)) investigate the conduct matter as if appointed or designated to do so; and
- (b) the other provisions of these Regulations apply in relation to that matter accordingly.

(4) This paragraph applies where the Commission determines under regulation 71(4) that there is no indication in the report that a LAPO may have—

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

(5) Where paragraph (4) applies, the Commission may notify the Chief Executive that the Chief Executive must determine—

- (a) whether or not the performance of a LAPO is unsatisfactory; or
- (b) what action (if any) the Chief Executive will take in respect of any such LAPO's performance.

(6) On receipt of a notification under paragraph (5) the Chief Executive must make those determinations and submit a memorandum to the Commission setting out the determinations the Chief Executive has made.

- (7) On receipt of a memorandum under paragraph (6), the Commission must—
- (a) consider the memorandum and whether the Chief Executive has made the determinations under paragraph (6) that the Commission considers appropriate;
 - (b) determine whether or not to make recommendations under regulation 75 (duties with respect to disciplinary proceedings etc.);
 - (c) make such recommendations (if any) under that regulation as it thinks fit.

Appeals with respect to an investigation

- 73.**—(1) This regulation applies where a complaint has been subjected to—
- (a) an investigation by the Chief Executive on the Chief Executive’s own behalf; or
 - (b) an investigation under the supervision of the Commission.
- (2) The complainant may appeal to the Commission—
- (a) on the grounds that the complainant has not been provided with adequate information—
 - (i) about the findings of the investigation;
 - (ii) about any determination of the Chief Executive relating to the taking (or not taking) of action in respect of any matters dealt with in the report on the investigation;
 - (b) against the findings of the investigation;
 - (c) against any determination by the Chief Executive that a person to whose conduct the investigation related has a case to answer, or has no case to answer, in respect of misconduct or gross misconduct or that such a person’s performance is, or is not, unsatisfactory;
 - (d) against any determination by the Chief Executive relating to the taking (or not taking) of action in respect of any matters dealt with in the report; and
 - (e) against any determination by the Chief Executive that the conditions in regulation 70(3) and (4) (requirement to send copy of the report to the Director of Public Prosecutions) are not satisfied.
- (3) In paragraph (2)—
- (a) references to the findings of an investigation do not include a reference to findings on a report submitted under regulation 60 (accelerated procedure in special cases); and
 - (b) references to the report of an investigation do not include a reference to a report submitted under that regulation.
- (4) The Commission must notify the Chief Executive, every person entitled to be kept properly informed in relation to the complaint under regulation 14 and the person complained against of any appeal brought under this regulation.
- (5) On the bringing of an appeal under this regulation, the Commission may require the Chief Executive to submit a memorandum to the Commission which—
- (a) sets out whether the Chief Executive has determined that a person to whose conduct the investigation related has a case to answer, or has no case to answer, in respect of misconduct or gross misconduct;
 - (b) sets out whether the Chief Executive has determined any such person’s performance is, or is not, unsatisfactory;
 - (c) sets out what action (if any) the Chief Executive has determined that the Chief Executive is required to or will, in the Chief Executive’s discretion, take in respect of the matters dealt with in the report;
 - (d) if the Chief Executive has decided in relation to a person to whose conduct the investigation related that disciplinary proceedings or unsatisfactory performance proceedings should not be brought against that person, sets out the Chief Executive’s reasons for so deciding; and

(e) if the Chief Executive made a determination that the conditions in regulation 70(3) and (4) are not satisfied, sets out the reasons for that determination, and the Chief Executive must comply with any requirement under this paragraph.

(6) Where the Commission so requires on the bringing of any appeal under this regulation in the case of an investigation by the Chief Executive on the Chief Executive's own behalf, the Chief Executive must provide the Commission with a copy of the report of the investigation.

(7) On an appeal under this regulation, the Commission must 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;
- (c) whether the Chief Executive—
 - (i) has made such a determination as is mentioned in paragraph (5)(a) or (b) that the Commission considers to be appropriate in respect of matters dealt with in the report; and
 - (ii) has determined that the Chief Executive is required to or will, in the Chief Executive's discretion, take the action (if any) that the Commission considers to be so appropriate; and
- (d) whether the conditions set out in regulation 70(3) and (4) are satisfied in respect of the report.

(8) If, on an appeal under this regulation, the Commission determines that the complainant has not been provided with adequate information about any matter, the Commission must give the Chief Executive all such directions as the Commission considers appropriate for securing that the complainant is properly informed.

(9) Nothing in paragraph (8) authorises the Commission to require the disclosure of any information the disclosure of which to the appellant has been or is capable of being withheld by virtue of regulation 16.

(10) If, on an appeal under this regulation, the Commission determines that the findings of the investigation need to be reconsidered, it must either—

- (a) review those findings without an immediate further investigation; or
- (b) direct that the complaint be re-investigated.

(11) If, on an appeal under this regulation, the Commission determines—

- (a) that the Chief Executive has not made a determination as to whether there is a case for a person to whose conduct the investigation related to answer in respect of misconduct or gross misconduct that the Commission considers appropriate;
- (b) that the Chief Executive has not made a determination as to whether such a person's performance is unsatisfactory; or
- (c) that the Chief Executive has not determined that the Chief Executive is required to or will, in the Chief Executive's discretion, take the action in respect of the matters dealt with in the report that the Commission considers appropriate,

the Commission must determine, in the light of that determination, whether or not to make recommendations under regulation 75 (duties with respect to disciplinary proceedings etc.) and make such recommendations (if any) under that regulation as it thinks fit.

(12) If disciplinary proceedings or unsatisfactory performance proceedings are brought by virtue of paragraph (11), the Chief Executive must ensure that they are proceeded with to a proper conclusion.

(13) If, on an appeal under this regulation, the Commission determines that the conditions set out in regulation 70(3) and (4) are satisfied in respect of the report, it must direct the Chief Executive to—

- (a) notify the Director of Public Prosecutions of the determination, and

- (b) send the Director a copy of the report.
- (14) The Commission must give notification of any determination under this regulation to—
 - (a) the Chief Executive;
 - (b) the complainant;
 - (c) every person entitled to be kept properly informed in relation to the complaint under regulation 14; and
 - (d) except in a case where it appears to the Commission that to do so might prejudice any proposed review or re-investigation of the complaint, the person complained against.
- (15) The Commission must give notification of any directions given to a person under this regulation to—
 - (a) the complainant;
 - (b) every person entitled to be kept properly informed in relation to the complaint under regulation 14; and
 - (c) except in a case where it appears to the Commission that to do so might prejudice any proposed review or re-investigation of the complaint, the person complained against.
- (16) The Chief Executive must comply with any directions given under this regulation.

Reviews and re-investigations following an appeal

74.—(1) On a review under regulation 73(10)(a) (appeals with respect to an investigation) of the findings of an investigation, the powers of the Commission are to do one or more of the following—

- (a) to uphold the findings in whole or in part;
- (b) to give the Chief Executive such directions as the Commission sees fit—
 - (i) as to the carrying out by the Chief Executive of the Chief Executive’s 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 Commission gives a direction under regulation 73(10) or paragraph (1) that a complaint be re-investigated, it must make a determination of the form that the re-investigation should take.

(3) Paragraphs (3) to (7) of regulation 38 (power of the Commission to determine the form of an investigation) apply in relation to a determination under paragraph (2) as they apply in the case of a determination under that regulation.

(4) The other provisions of these Regulations (including this paragraph) apply in relation to any re-investigation in pursuance of a direction under regulation 73(10) or paragraph (1) of this regulation as they apply in relation to any investigation in pursuance of a determination under regulation 38.

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

- (a) to the Chief Executive;
- (b) to the complainant;
- (c) to every person entitled to be kept properly informed in relation to the complaint under regulation 14; and
- (d) except in a case where it appears to the Commission that to do so might prejudice any proposed re-investigation of the complaint, to the person complained against.

(6) The Commission must also give notification of any directions given to the Chief Executive under this regulation—

- (a) to the complainant;
- (b) to every person entitled to be kept properly informed in relation to the complaint under regulation 14; and
- (c) except in a case where it appears to the Commission that to do so might prejudice any proposed review or re-investigation of the complaint, to the person complained against.

Duties with respect to disciplinary proceedings etc.

75.—(1) This regulation applies where, in the case of any investigation, the Chief Executive—

- (a) has given, or is required to give, a notification under regulation 70(12) of the action the Chief Executive is required to or will, in the Chief Executive’s discretion, take in relation to the matters dealt with in any report of the investigation;
- (b) has submitted, or is required to submit, a memorandum to the Commission under regulation 69 or 73 setting out the action that the Chief Executive is required to or will, in the Chief Executive’s discretion, take in relation to those matters; or
- (c) has submitted, or is required to submit, a memorandum to the Commission under regulation 72.

(2) Subject to regulation 59 (restrictions on proceedings pending the conclusion of an investigation) and to any recommendations or directions under the following provisions of this regulation, the Chief Executive must—

- (a) take the action which has been or is required to be notified or, as the case may be, which is or is required to be set out in the memorandum; and
- (b) in a case where that action consists of or includes the bringing of disciplinary proceedings, secure that those proceedings, once brought, are proceeded with to a proper conclusion.

(3) Where this regulation applies by virtue of paragraph (1)(b), the Commission may make a recommendation to the Chief Executive in respect of a LAPO that—

- (a) the person has a case to answer in respect of misconduct or gross misconduct or has no case to answer in relation to the conduct to which the investigation related;
- (b) the person’s performance is, or is not, unsatisfactory;
- (c) disciplinary proceedings or unsatisfactory performance proceedings of the form specified in the recommendation are brought against the person in respect of the conduct, efficiency or effectiveness to which the investigation related;
- (d) any disciplinary proceedings or unsatisfactory performance proceedings brought against the person are modified so as to deal with such aspects of that conduct, efficiency or effectiveness as may be so specified.

(4) Where this regulation applies by virtue of paragraph (1)(c), the Commission may make a recommendation to the Chief Executive in respect of a LAPO—

- (a) that the person’s performance is, or is not, satisfactory;
- (b) that action of the form specified in the recommendation is taken in respect of the person’s performance.

(5) The Chief Executive must notify the Commission whether the Chief Executive accepts a recommendation made under this regulation and, if the Chief Executive does, set out in the notification the steps that the Chief Executive is proposing to take to give effect to it.

(6) If, after the Commission has made a recommendation under this regulation, the Chief Executive does not take steps to secure that full effect is given to the recommendation—

- (a) the Commission may direct the Chief Executive to take steps for that purpose; and
- (b) the Chief Executive must comply with the direction.

(7) A direction under paragraph (6) may, to such extent as the Commission thinks fit, set out the steps to be taken by the Chief Executive in order to give effect to the recommendation.

(8) Where the Commission gives the Chief Executive a direction under this regulation, it must supply the Chief Executive with a statement of its reasons for doing so.

(9) Where disciplinary proceedings or unsatisfactory performance proceedings have been brought in accordance with a recommendation or direction under this regulation, the Chief Executive must ensure that they are proceeded with to a proper conclusion.

(10) The Commission may at any time withdraw a direction given under this regulation, and paragraph (9) does not impose any obligation in relation to any time after the withdrawal of the direction.

(11) The Chief Executive must keep the Commission informed—

- (a) in a case in which this regulation applies by virtue of paragraph (1)(b), of whatever action the Chief Executive takes in pursuance of the duty under paragraph (2); and
- (b) in every case of a recommendation or direction under this regulation, of whatever action the Chief Executive takes in response to that recommendation or direction.

Information for the complainant about disciplinary recommendation

76.—(1) Where—

- (a) the Commission makes a recommendation under regulation 75 (duties with respect to disciplinary proceedings etc.) in the case of an investigation of a complaint; and
- (b) the Chief Executive notifies the Commission that the recommendation has been accepted,

the Commission must notify the complainant and every person entitled to be kept properly informed in relation to the complaint under regulation 14 of the recommendation and of the steps that have been, or are to be taken, by the Chief Executive to give effect to it.

(2) Where in the case of an investigation of a complaint the Chief Executive—

- (a) notifies the Commission that the Chief Executive does not (either in whole or in part) accept a recommendation made by the Commission under regulation 75; or
- (b) fails to take steps to give full effect to any such recommendation,

the Commission must determine what (if any) further steps to take under that regulation.

(3) The Commission must notify the complainant and every person entitled to be kept properly informed in relation to the complaint under regulation 14—

- (a) of any determination under paragraph (2) not to take further steps under regulation 75; and
- (b) where it determines under that paragraph to take further steps under that regulation, of the outcome of the taking of those steps.

Recommendations by the Commission

77.—(1) This regulation applies where the Commission has received a report under—

- (a) regulation 68(3) (report on completion of investigation of a complaint or conduct matter supervised or managed by the Commission);
- (b) regulation 68(4) (report on completion of investigation of a complaint or conduct matter by the Commission itself); or
- (c) regulation 71(2) (report on completion of investigation of a DSI matter).

(2) This regulation also applies where the Commission has made a determination on an appeal under—

- (a) regulation 27 (appeals relating to complaints dealt with other than by investigation); or
- (b) regulation 73 (appeals with respect to an investigation).

(3) The Commission may make a recommendation to the Chief Executive in relation to a matter dealt with in the report or appeal.

(4) Where the Commission makes a recommendation under this regulation, it must also—

- (a) publish the recommendation, and
- (b) send a copy of it to any person to whom the Commission thinks a copy should be sent.

(5) Nothing in this regulation affects the power of the Commission to make recommendations or give advice under regulation 6(1)(e) (general functions of the Commission under these Regulations).

(6) Where the Commission makes a recommendation under this regulation, the Chief Executive must provide to the Commission a response in writing stating—

- (a) what action the Chief Executive has taken or proposes to take in response to the recommendation; or
- (b) why the Chief Executive has not taken, or does not propose to take, any action in response.

(7) The Chief Executive must provide the response to the Commission before the end of the period of 28 days beginning with the day on which the recommendation was made.

PART 8 GENERAL

Complaints or conduct matters concerning a person who has subsequently ceased to be an officer of the Authority

78.—(1) Where a complaint or conduct matter relates to the conduct of a person who has ceased to be an officer of the Authority since the time of the conduct, these Regulations apply in relation to such a person as if they did not include any requirement for the Chief Executive to determine whether disciplinary proceedings should be brought against that person.

Complaints or conduct matters concerning a person whose identity is unknown

79.—(1) Where a complaint or conduct matter relates to the conduct of a person whose identity is unknown at the time at which the complaint is made or the conduct matter is recorded, and whose identity is not known during or subsequent to the investigation of the complaint or recordable conduct matter, these Regulations apply in relation to such a person as if they did not include—

- (a) any requirement for the person complained against to be given a notification or an opportunity to make representations;
- (b) any requirement for the Commission or the Chief Executive to determine whether a criminal offence may have been committed by the person whose conduct has been the subject matter of an investigation, or to take any action in relation to such a determination;
- (c) any requirement for the Chief Executive to determine whether disciplinary proceedings should be brought against a person whose conduct is the subject matter of a report.

(2) Where the identity of such a person is subsequently ascertained, the Commission and the Chief Executive must take such action in accordance with these Regulations as they see fit, regardless of any previous action taken under these Regulations as modified above.

Notification of actions and decisions

80.—(1) So far as not covered by regulations 69(11) and (12) and 73(14) and (15) (notifications by the Commission in relation to recommending disciplinary proceedings), where the Commission takes any action or decisions in consequence of it having received a memorandum under regulation 69(9) or regulation 73(5), it must notify such action or decisions, together with an explanation of its reasons for having taken them, to—

- (a) the Chief Executive;

- (b) the complainant and any other interested person within the meaning of regulation 14 (duty to provide information for other persons);
- (c) subject to paragraph (2), the person complained against.

(2) The Commission may decide not to give such a notification and explanation to the person complained against if it is of the opinion that that notification might prejudice any criminal investigation or proceedings or review of the complaint.

Records to be kept by the Chief Executive

81.—(1) The Chief Executive must keep records, in such form as the Commission must determine, of—

- (a) every complaint and purported complaint that is made to the Chief Executive;
- (b) every conduct matter recorded under regulation 28 or 29;
- (c) every DSI matter recorded under regulation 34;
- (d) every exercise of a power or performance of a duty under these Regulations.

Register to be kept by the Commission

82.—(1) The Commission must establish and maintain a register of all information supplied to it by the Chief Executive under these Regulations.

(2) Subject to paragraph (3), the Commission may publish or otherwise disclose to any person any information held on the register, provided that the publication or disclosure is necessary for or conducive to the purpose of—

- (a) learning lessons from the handling of, or demonstrating the thoroughness and effectiveness of, local resolutions or investigations;
- (b) raising public awareness of the complaints system; or
- (c) improving the complaints system.

(3) Information may not be published or disclosed in circumstances where in the opinion of the Commission the non-disclosure of information is necessary for a purpose mentioned in regulation 16(1)(a) or (b) (exceptions to the duty to keep the complainant informed and to provide information for other persons).

Delegation of powers and duties by the Chief Executive

83.—(1) Subject to paragraph (2), the Chief Executive may delegate all or any of the powers or duties conferred or imposed on the Chief Executive by or under these Regulations to another officer of the Authority.

(2) The Chief Executive may not, in any particular case, delegate any power or duty under paragraph (1) to a person—

- (a) unless that person has an appropriate level of knowledge, skills and experience to exercise the power or perform the duty;
- (b) if that person works, directly or indirectly, under the management of the person whose conduct is being investigated;
- (c) if that person's involvement in the role could reasonably give rise to a concern as to whether that person could act impartially under these Regulations.

Manner and time limits of notifications

84.—(1) Any notification to be given under these Regulations must—

- (a) unless otherwise specified in these Regulations or determined in guidance issued by the Commission, be given in writing;

(b) unless otherwise specified in these Regulations, be made within such period as the Commission may determine in guidance.

(2) No time limit mentioned in these Regulations or determined by the Commission applies in any case where exceptional circumstances prevent that time limit being complied with.

Appeals

85.—(1) This regulation applies to an appeal under any of the following provisions of these Regulations—

- (a) regulation 20(3) (appeal against a failure to record a complaint);
- (b) regulation 25(6) (appeal against a decision to handle a complaint otherwise than in accordance with these Regulations or take no action in relation to it);
- (c) regulation 27(1) (appeal against the outcome of a complaint subjected to local resolution or handled otherwise than in accordance with these Regulations);
- (d) regulation 66(9) (appeal against a decision to discontinue an investigation); and
- (e) regulation 73(2) (appeal in relation to an investigation).

(2) Where the Chief Executive notifies the complainant of a decision which is or may be capable of appeal under any of the provisions in paragraph (1), the Chief Executive must at the same time notify the complainant in writing of—

- (a) the existence of the right of appeal;
- (b) the fact that the appeal is to the Commission; and
- (c) the time limit for making an appeal mentioned in paragraph (3).

(3) Subject to paragraph (4), an appeal must be made within a period of 28 days commencing on the day after the date of the letter giving notification under paragraph (2).

(4) The Commission may extend the time period mentioned in paragraph (3) in any case where it is satisfied that by reason of the special circumstances of the case it is just to do so.

(5) Subject to paragraph (6), an appeal must be made in writing and must state—

- (a) details of the complaint;
- (b) the date on which the complaint was made;
- (c) the decision which is the subject of the appeal;
- (d) the grounds for the appeal; and
- (e) the date on which notification was given under paragraph (2).

(6) Where the Commission receives an appeal which fails to comply with one or more of the requirements mentioned in paragraph (5), it may decide to proceed as if that requirement or those requirements had been complied with.

(7) Where the Commission receives an appeal it must—

- (a) notify the Chief Executive of the appeal as soon as reasonably practicable; and
- (b) request any information from any person which it considers necessary to dispose of the appeal.

(8) Any person receiving a request under paragraph (7)(b) must supply to the Commission the information requested.

(9) The Commission must determine the outcome of the appeal as soon as practicable.

(10) The Commission must notify the complainant and the Chief Executive of the reasons for its determination.

(11) In the case of an appeal other than one under regulation 20(3)—

- (a) the Commission must notify the complainant of any direction it gives to the Chief Executive as to the future handling of the complaint; and

(b) subject to paragraph (12), the Chief Executive must notify the person complained against of any such direction.

(12) The Chief Executive may decide not to make a notification under paragraph (11)(b) if the Chief Executive is of the opinion that to do so might prejudice any criminal investigation or proceedings or would otherwise be contrary to the public interest.

Amber Rudd
Secretary of State
Home Office

3rd April 2017

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for the basis on which the Independent Police Complaints Commission (“the Commission”) has oversight of complaints and other matters relating to the conduct of officers of the Gangmasters and Labour Abuse Authority (“the Authority”) in their capacity as labour abuse prevention officers (“LAPOs”). Section 114B of the Police and Criminal Evidence Act 1984 (inserted by section 12 of the Immigration Act 2016) defines a LAPO as an officer of the Authority who is authorised by the Secretary of State for the purposes of the section and who is acting for the purposes of one of four specified Acts (or any other purpose prescribed in regulations made by the Secretary of State).

The statutory framework in accordance with which the Commission has oversight of police conduct is set out in Part 2 of, and Schedule 3 to, the Police Reform Act 2002 (“the 2002 Act”). These Regulations make provision which broadly reflects existing arrangements in accordance with which the Commission has oversight of the police, but with modifications in parts where it is necessary to reflect differences between the Authority and the police.

Part 1 contains introductory provision, including an interpretation provision (regulation 2).

Part 2 contains provision which sets out the broad basis on which the Commission has oversight of complaints and misconduct relating to LAPOs. It makes provision to apply specific sections of Part 2 of the 2002 Act with modifications (regulation 5), and sets out the general functions of the Commission and the reporting requirements which apply to it (regulations 6 and 7). Regulation 8 defines the matters which may be the subject of an investigation under these Regulations (a complaint, conduct matter or death or serious injury (or DSI) matter). Regulations 9 to 12 set out the general duties of the Chief Executive of the Authority (“the Chief Executive”), payment for assistance (e.g. in a case where the police assists with an investigation), the provision of information by the Chief Executive to the Commission and requirements in relation to onward disclosure of such information and the inspection of Authority premises by the Commission.

Regulations 13 to 16 make provision for keeping complainants and other interested persons informed about investigations, and includes provision about the manner in which these requirements are fulfilled and exceptions to them.

Part 3 contains provision about the handling of complaints. It imposes duties to preserve evidence (regulation 17) and duties regarding the initial handling and recording of complaints (regulation 18). It makes provision regarding the referral of complaints to the Commission (regulations 21 and 22) and the handling of complaints by the Chief Executive (regulations 23 to 26). There are prescribed appeal rights in certain cases (regulations 20, 25 and 27).

Part 4 contains provision about the handling of conduct matters. It imposes duties in relation to the identification and recording of conduct matters (regulations 28 to 30) and the preservation of evidence (regulation 31) and makes provision regarding the referral of conduct matters to the Commission (regulations 32 and 33).

Part 5 contains provision about the handling of DSI matters. It imposes duties to record DSI matters and preserve evidence (regulations 34 and 35) and makes provision regarding the referral of DSI matters to the Commission (regulations 36 and 37).

Part 6 contains provision governing the basis on which the Commission determines the form of an investigation in a matter referred to it (regulation 38), ranging from investigations carried out by the Chief Executive on the Chief Executive's own behalf (regulation 41) or supervised or managed by the Commission (regulations 42 or 43) to investigations carried out by the Commission itself (regulation 44). There is also provision governing the appointment of persons to carry out investigations (regulation 39) and the processes which apply in specific cases (e.g. withdrawn complaints or the resumption of an investigation following the conclusion of relevant criminal proceedings) (regulations 40 and 49 to 52).

Part 6 also contains provision governing a special procedure which applies in a case in which a conduct matter is revealed during the course of the investigation of a complaint (regulations 53 to 56), powers to interview witnesses (regulation 58), restrictions on certain proceedings during an investigation (regulation 59) and an accelerated procedure in cases where gross misconduct is identified during an investigation into a complaint or conduct matter (regulations 60 to 64). The provisions on interviews require the officer of the Authority called to interview to attend. If the officer fails to attend, the officer may be dealt with in accordance with the Authority's disciplinary processes. This Part also contains provision governing the discontinuance of an investigation (regulations 65 and 66) and the procedure in cases where a conduct matter is revealed during an investigation into a DSI matter (regulation 67).

Part 7 sets out the basis governing the submission of investigation reports, the actions which the Commission or the Chief Executive are required to take, the prescribed appeal rights in relation to an investigation and the availability of a review or reinvestigation following an appeal (regulations 68 to 74). Regulation 75 sets out the duties on the Chief Executive with respect to disciplinary proceedings (e.g. following a recommendations made by the Commission) and the information which is required to be provided to complainants about such proceedings (regulation 76).

Part 8 contains provision about a number of general matters.

An impact assessment has not been prepared for these Regulations as no impact on businesses, charities, voluntary bodies or the public sector is foreseen.

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