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**[Mark-up – May 2012]**  
**(Based on L.N. 58 of 2012)**

**FIRE SERVICES ORDINANCE**

FIRST SCHEDULE  
OFFENCES AGAINST DISCIPLINE

[section 12]

Any member commits an offence against discipline who-

- (1) is guilty of cowardice in the performance of his duty;
- (2) without good and sufficient cause fails to carry out any lawful order, whether written or verbal;
- (3) is insubordinate towards any member whose orders it is his duty to obey;
- (4)
  - (a) neglects or without good and sufficient cause fails to do, promptly and diligently, anything it is his duty to do;
  - (b) by carelessness or neglect in the performance of his duty contributes to the occurrence of any loss, damage or injury to any person or property;
- (5) knowingly makes any false, misleading, or inaccurate statement in connexion with his duty either verbally or in writing;
- (6) with intent to deceive destroys any official record, document or book or alters or erases any entry therein;
- (7) without proper authority-
  - (a) divulges any matter which it is his duty to keep secret;
  - (b) directly or indirectly communicates to the press or to any other person any matter which may have come to his knowledge in the course of his official duties;
  - (c) publishes any matter or makes any public pronouncement relating to the Fire Services Department;
- (8)
  - (a) solicits or receives any unauthorized fee, gratuity or other consideration in connexion with his duties as a member;
  - (b) fails to account for, or to make a prompt and true return of, any money or property for which he is responsible, either in connexion with his duties as a member or with any fund connected with the Fire Services Department or the Fire Services Department staff;

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- (c) improperly uses his position as a member;
  - (9) without proper authority or reasonable excuse-
    - (a) absents himself from duty or from any place of parade;
    - (b) arrives late for any duty or parade;
  - (10)
    - (a) wilfully or negligently damages or loses any articles of clothing or equipment, or any implement, accoutrement or appointment whatever, with which he has been provided or entrusted, or fails to take proper care thereof;
    - (b) neglects to report any damage to, or loss of, any article of clothing or equipment, or any implement, accoutrement or appointment whatever, with which he has been provided or entrusted;
  - (11) when on duty, or called upon for duty, is unfit for duty by reason of intoxicating drink or of drugs taken otherwise than under medical direction;
  - (12) when on or off duty acts in a disorderly manner, or in any manner prejudicial to discipline, or likely to bring discredit upon the Fire Services Department or the public service;
  - (13) is guilty of anything, whether by reason of contravention of government regulations or otherwise, which amounts to misconduct in a public office.

## SECOND SCHEDULE

[section 14]

### PART I

#### RULES ~~OF PROCEDURE~~

#### FOR ~~THE~~ INVESTIGATION INTO OFFENCES AGAINST DISCIPLINE BY SUBORDINATE OFFICERS AND MEMBERS OF OTHER RANKS

### 1. Interpretation of this Part

In this Part—

“accused” (被控者) means a subordinate officer or a member of other ranks charged with an offence against discipline;

“barrister” (大律師) has the meaning given by section 2(1) of the Legal Practitioners Ordinance (Cap. 159);

“defence representative” (辯護代表) means a person specified in rule 5(1)(a) or (b) of this Part who represents an accused at a hearing;

“hearing” (聆訊) means a hearing conducted in respect of an offence against discipline;

“solicitor” (律師) has the meaning given by section 2(1) of the Legal Practitioners Ordinance (Cap. 159).

## **1.2. Charge sheet**

Every charge ~~shall~~ must be entered on a charge sheet.

## **2.3. Investigation of charge**

Every charge ~~shall~~ is to be investigated by the Director by way of a hearing under this Part without delay. ~~in the first instance without delay in the presence of the accused and a full record thereof be made by the Director.~~

## **4. Appointment of prosecutor**

The Director must appoint a prosecutor for the purposes of the proceedings against an accused under this Part.

## **5. Representation of accused at hearing**

(1) An accused may be represented at a hearing by—

(a) (subject to the Director’s approval) a barrister or solicitor; or

(b) any other person of the accused’s choice who is approved by the Director for the purpose,

and the person specified in paragraph (a) or (b) may conduct the defence on the accused’s behalf.

(2) If the Director gives approval under subrule (1)(a), the accused may be represented at the hearing by a barrister or solicitor of the accused’s choice.

(3) Despite subrule (1), the accused must attend the hearing in person.

(4) If the accused is represented at the hearing by a barrister or solicitor, the Director and the prosecutor may separately be assisted by a barrister or solicitor at the hearing.

## **3.6. Procedures at hearing**

(1) The ~~charge shall be~~ Director must read and explained to the accused any charge against the accused.

(2) The prosecutor or any barrister or solicitor assisting the prosecutor may—

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- (a) call any witness;
  - (b) cross-examine any witness giving evidence for the accused; and
  - (c) make any statement in support of the charge.
- (3) The accused or the defence representative may—
- (a) cross-examine any witness giving evidence against the accused;
  - (b) call any witness; and
  - (c) make any statement to defend the accused.
- (4-) Evidence ~~shall~~ must not be taken on oath or affirmation.
- ~~5. The accused shall have full liberty to cross-examine any witness against him and to call any witnesses and make any statement in his defence.~~
- ~~6.~~ (5) No documentary evidence ~~shall~~ may be used against the accused unless ~~he has previously been supplied with a copy thereof of the documentary evidence, or has been given access thereto to the documentary evidence or a copy,~~ has been given to the accused before the hearing.

## 7. Adding or amending charge

- (1) The ~~Director~~ prosecutor may ~~at any stage of the proceedings~~ amend ~~the~~ a charge or add a new charge at any time before the Director communicates a finding to the accused:.
- (2) ~~Provided that in such event the~~ The Director must read and explain any amended or new charge ~~shall be read and explained~~ to the accused.
- (3) The accused is entitled to a reasonable adjournment to prepare a further defence.
- (4) The prosecutor and the accused—
- (a) ~~who shall be entitled to have~~ may recall any witnesses who ~~have~~ has given evidence ~~recalled~~ for the purpose of further examination, cross-examination or re-examination; and—
  - (b) ~~to~~ may call ~~such any~~ further witnesses ~~as he may desire~~.

## 8. Proceedings in accused's absence

Where an accused is required to appear in person in any proceedings under this Part and repeatedly fails to appear, the Director may proceed in the accused's absence if satisfied that the accused has no reasonable excuse for the failures.

## 9. Record of proceedings

(1) The Director must make, or cause to be made, a written record of the proceedings of a hearing.

(2) The Director may make, or cause to be made, an audio recording or audio and visual recording of the proceedings, or any part of the proceedings, of a hearing.

## 8.10. Finding and punishment

(1) At the conclusion of ~~the a~~ hearing ~~of a charge~~, the Director ~~shall~~ must—

- (a) if in ~~his~~ the Director's opinion the evidence does not show that ~~some~~ any offence against discipline has been committed, dismiss ~~it~~ the charge;
- (b) if in ~~his~~ the Director's opinion the evidence ~~does~~ shows that ~~some~~ an offence against discipline has been committed, either—
  - (i) award a punishment within ~~his~~ the Director's powers; or
  - (ii) refer the case to the Chief Executive.

(2) Any punishment awarded must be entered in the conduct sheet of the accused so punished.

## 9.11. Reference of case to Chief Executive

(1) ~~Whenever~~ If the Director refers a case to the Chief Executive, ~~under rule 8(b) he shall~~ the Director must forward to the Chief Executive—

- (a) a ~~typed~~ copy of the charge sheet;
- (b) a copy of the written record of proceedings ~~(including the charge)~~ made in respect of the case under rule 9(1) of this Part which has been certified by ~~himself~~ the Director to be a true copy of the original ~~thereof~~;
- (~~bc~~) a report setting out—
  - (i) ~~his~~ the Director's reasons for considering the charge proved;
  - (ii) ~~his~~ the Director's recommendations ~~whether as regards~~ with respect to punishment or otherwise; and
- (~~ed~~) the accused's conduct sheet.

(2) ~~Whenever the~~ The Director ~~so refers a case he shall~~ must inform the accused by notice in writing that ~~he~~ the accused may, within 14 days from the service of the notice, forward any further representations ~~he may~~ that the accused

wishes to make ~~in writing~~ to the Chief Executive ~~in writing~~.

#### **~~10.12.~~ Procedure when case referred to Chief Executive**

(1) ~~Upon~~ On reference to ~~him~~ the Chief Executive of a case and after consideration of any representations ~~in writing of made by~~ the accused, the Chief Executive ~~shall must~~—

- (a) if ~~he is of in~~ the Chief Executive's opinion ~~that~~ the charge has not been proved, either—
  - (i) dismiss ~~it the~~ charge; or
  - (ii) order either a further investigation by the Director, or a fresh investigation in ~~such~~ a manner and by ~~such~~ a person or persons ~~as he may that the Chief Executive~~ thinks fit;
- (b) if ~~he is of in~~ the Chief Executive's opinion ~~that~~ the charge is proved, or if, after any further or fresh investigation ordered under paragraph (a)(ii), ~~he the~~ Chief Executive is of ~~such that~~ opinion, ~~shall~~ award a punishment within ~~his the~~ Chief Executive's powers.

~~11. Every punishment awarded shall be entered in the conduct sheet of the member so punished.~~

#### **~~12.13.~~ Procedure where Director has delegated powers**

(1) ~~Where~~ If the Director has ~~delegated any function, power or duty to another member pursuant to~~ authorized under section 6(2), ~~references in rules 8, 9 and 10 of this Ordinance any other person to exercise or perform the Director's powers, functions or duties under rules 10, 11 and 12 of this Part~~—

- (a) a reference in those rules to the Director, ~~shall be read as if they were~~ is to be regarded as a references to that other member; and
- (b) a reference in those rules to the Chief Executive, ~~shall be read as if they were~~ is to be regarded as a references to the Director;.

(2) ~~but any~~ A case referred to the Director by another ~~member pursuant to rule 8(b) (as modified by this rule)~~ person under rule 10(1)(b)(ii) of this Part as modified by subrule (1) may be referred to the Chief Executive by the Director in accordance with rules ~~9 and 10~~ 11 of this Part.

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[section 14a]

PART II  
RULES FOR AWARDING PUNISHMENT  
WHERE A CRIMINAL OFFENCE HAS BEEN COMMITTED  
BY A SUBORDINATE OFFICER OR A MEMBER OF OTHER RANKS

1. In the case of a subordinate officer, the Director shall as soon as practicable-
  - (a) refer the case to the Chief Executive; and
  - (b) notify the subordinate officer that he has done so and that the subordinate officer may make representations in writing to the Chief Executive in mitigation of punishment within 14 days of receiving such notice or within such further period as the Chief Executive may allow.
2. In referring a case under rule 1 the Director shall send to the Chief Executive-
  - (a) a copy of the record of the **criminal** proceedings;
  - (b) the officer's conduct sheet; and
  - (c) the recommendation of the Director with respect to punishment or otherwise.
3. The Chief Executive may, after considering any representations made by the officer, award any one or more of the punishments which he may award under paragraph (1) of Part I of the Third Schedule in respect of a disciplinary offence by a subordinate officer.
4. In the case of a member of other ranks, the Director shall notify the member that he may make representations in writing in mitigation of punishment within 14 days of receiving such notification and, after considering any such representations, may award any one or more of the punishments which he may award under Part II of the Third Schedule.

THIRD SCHEDULE  
PUNISHMENT OF SUBORDINATE OFFICERS AND  
MEMBERS OF OTHER RANKS FOR OFFENCES AGAINST DISCIPLINE

[section 14]

PART I  
SUBORDINATE OFFICERS

Subordinate officers found guilty of an offence against discipline may be

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awarded punishments as follows-

- (1) by the Chief Executive-
  - (a) any one or more of the following-
    - (i) dismissal without retirement benefits;
    - (ia) compulsory retirement with full retirement benefits or reduced retirement benefits or without retirement benefits;
    - (ii) reduction in rank;
    - (iii) stoppage or deferment of increment;
    - (iv) fine;
    - (v) severe reprimand;
    - (vi) reprimand;
    - (vii) extra duties;
  - (b) *(Repealed)*
- (2) by the Director any one or more of the following-
  - (a) reduction in rank;
  - (b) stoppage or deferment of increment;
  - (c) a fine not exceeding one month's salary (excluding allowances);
  - (d) severe reprimand;
  - (e) reprimand;
  - (f) extra duties.

## PART II

### MEMBERS OF OTHER RANKS

Members of other ranks found guilty of an offence against discipline may be punished by the Director or the Chief Executive-

- (a) by any one or more of the following-
  - (i) dismissal without retirement benefits;
  - (ia) compulsory retirement with full retirement benefits or reduced retirement benefits or without retirement benefits;
  - (ii) reduction in rank;
  - (iii) stoppage or deferment of increment;
  - (iv) a fine not exceeding one month's salary (excluding allowances);
  - (v) severe reprimand;



- (vi) reprimand;
- (vii) extra duties.
- (b) *(Repealed)*

#### FOURTH SCHEDULE RIGHTS OF APPEAL AND RELATED PROVISIONS

[section 14B]

1. A subordinate officer or member of other ranks (including one who has been dismissed) may appeal, in accordance with the following rules, against-
  - (a) a finding by the Director or other member that he is guilty of a disciplinary offence;
  - (b) any punishment awarded by the Director or other member, other than under rule 4;
  - (c) any order or requirement for payment in respect of loss or damage made by the Director under section 14C.
2. A member of other ranks may also appeal, in accordance with the following rules, against a punishment awarded to him by the Director under Part II of the Second Schedule.
3. The appeal shall lie-
  - (a) to the Chief Executive, in respect of a finding made or punishment awarded by the Director; and
  - (b) to the Director, in all other cases.
4. Upon an appeal, the Chief Executive or the Director, as the case may be, may-
  - (a) confirm or reverse the finding;
  - (b) confirm the punishment;
  - (c) subject to rule 9, substitute any other punishment which could have been awarded in the first instance;
  - (d) remit the punishment in full or in part without substituting any other punishment;
  - (e) if he dismisses an appeal against a finding and no punishment has been awarded, treat the appeal as if it were a case referred to him for punishment and award any punishment or take any other action which he is authorized to take.
5. Upon a review under section 14B(3) the Director may exercise any of the powers in rule 4(a), (b), (c) or (d).

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6. An appeal shall be made in writing within 14 days from the day on which the subordinate officer or member of other ranks is informed that he has been found guilty of an offence or from any later day on which punishment is awarded for that offence.

7. For the purpose of any appeal against a finding, the Chief Executive or the Director, as the case may be, may-

(a) take again the whole or any part of the evidence or accept in whole or in part the record of the evidence already taken; and

(b) hear any additional evidence which he may consider relevant,

and the Director may exercise the like powers where he reviews a finding under section 14B(3).

8. In the event of an appeal, any punishment (other than a reprimand or severe reprimand) awarded to a subordinate officer or a member of other ranks shall be suspended until the appeal is disposed of or abandoned.

9. Neither the Director nor the Chief Executive shall award a greater punishment under rules 4 and 5 without first allowing the subordinate officer or member of other ranks a reasonable opportunity to be heard or to make representations in writing as to why the punishment should not be increased.

**[Mark-up – May 2012]**  
**(Based on L.N. 59 of 2012)**

**POLICE (DISCIPLINE) REGULATIONS**  
(Cap. 232, section 45)

**PART I**  
**PRELIMINARY**

**1. Citation**

These regulations may be cited as the Police (Discipline) Regulations.

**2. Interpretation**

In these regulations, unless the context otherwise requires-

“appropriate tribunal” (適當審裁體) in relation to an inspector has the meaning assigned to it by regulation 16, and in relation to a junior police officer has the meaning assigned to it by regulation 4;

“barrister” (大律師) has the meaning given by section 2(1) of the Legal Practitioners Ordinance (Cap. 159);

“defaulter” (違紀者) means a police officer charged with a disciplinary offence;

“Defaulter Report” (違紀者報告) means the record of the case against—

- (a) a police officer against whom a disciplinary charge is intended to be laid under regulation 5(1) or 17(1); or
- (b) a defaulter;

“defence representative” (辯護代表) means a person specified in regulation 7B(1)(a), (b), (c) or (d) or 18C(1)(a), (b), (c) or (d) who represents a defaulter at a hearing;

“disciplinary offence” (違紀行為) means a disciplinary offence specified in regulation 3(2);

“Force Discipline Officer” (警隊紀律主任) means a police officer appointed by the Commissioner to be Force Discipline Officer for the purposes of these regulations;

“hearing” (聆訊) means a hearing conducted in respect of a disciplinary offence;

“inspector” (督察) means an inspector, senior inspector or chief inspector;

“Junior police officer” (初級警務人員) means a police officer below the rank of

inspector;

“official record of proceedings” (程序正式紀錄) means a written record of the proceedings of a hearing made under regulation 10A(1) or 22A(1);

“senior police officer” (高級警務人員) means a chief superintendent, assistant commissioner or senior assistant commissioner;

“solicitor” (律師) has the meaning given by section 2(1) of the Legal Practitioners Ordinance (Cap. 159);

“superintendent” (警司) includes senior superintendent.

### 3. Disciplinary offences

(1) Any inspector or junior police officer who commits any disciplinary offence specified in paragraph (2), and-

- (a) pleads guilty before an appropriate tribunal; or
- (b) is found guilty by an appropriate tribunal,

may be punished by such tribunal in accordance with these regulations.

(2) The offences against discipline are-

- (a) absence from duty without leave or good cause;
- (b) sleeping on duty;
- (c) conduct to the prejudice of good order and discipline;
- (d) cowardice in the performance of duty;
- (e) contravention of police regulations, or any police orders, whether written or verbal;
- (f) insubordination;
- (g) being unfit for duty through intoxication;
- (h) neglect of duty or orders;
- (i) malingering;
- (j) making a statement which is false in a material particular in the course of his duty or in connection with the discharge by the police force of any of its duties or functions;
- (k) unlawful or unnecessary exercise of authority resulting in loss or injury to any other person or to the Government;
- (l) wilful destruction or negligent loss of or injury to Government property;
- (m) conduct ~~calculated~~ likely to bring the public service into disrepute.

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**PART IA**  
**JUNIOR POLICE OFFICERS AND INSPECTORS – MINOR**  
**OFFENCES**

**3A. Interpretation in this Part**

For the purposes of this Part-

“appointed officer” (受委人員) means an officer appointed under regulation 3B(2) to conduct proceedings under this Part;

“appropriate officer” (適當人員) means, where the alleged offender is a junior police officer, a superintendent, and where the alleged offender is an inspector, a senior police officer;

“minor offence” (輕微違紀行爲) means a disciplinary offence which, having regard to the alleged offender's record and the circumstances of the case, as established to the satisfaction of an appropriate officer, would, if admitted, merit no punishment under these regulations other than a written admonishment

**3B. Minor offences**

(1) Where it appears to an appropriate officer that there is a prima facie case of a minor offence on the part of an inspector or junior police officer, a statement of the facts in respect thereof may be entered on a document entitled Minor Offences Report which shall be the record of the case against such inspector or junior police officer.

(2) A senior police officer shall appoint a superintendent to conduct proceedings under this Part against an alleged offender who is an inspector and a superintendent shall appoint an inspector to conduct proceedings under this Part against an alleged offender who is a junior police officer.

**3C. Procedure for minor offences**

(1) The alleged offender shall appear before the appointed officer **in person** and shall be called upon to admit or deny the statement of facts in respect of the alleged minor offence and shall be advised that if he admits the facts he will receive a written admonishment.

(2) If the alleged offender admits the facts the appointed officer shall endorse the Minor Offences Report accordingly and issue a written admonishment to the offender.

(3) If the alleged offender denies the facts the appointed officer shall endorse the Minor Offences Report accordingly and return it to the appropriate officer.

(4) If a Minor Offences Report is returned to the appropriate officer

under paragraph (3), a charge or charges shall be heard, in the case of an alleged offender who is a junior police officer, under Part II, and in the case of an alleged offender who is an inspector, under Part III.

(5) ~~No person shall appear on behalf of an alleged offender in proceedings under this Part. (Repealed).~~

## PART II

### JUNIOR POLICE OFFICERS: INVESTIGATION INTO DISCIPLINARY OFFENCES, PUNISHMENT AND APPEALS

#### 4. Appropriate tribunal

(1) For the purposes of this Part—

“appropriate tribunal” (適當審裁體) means—

(a) a single police officer not below the rank of a superintendent appointed by the Commissioner or by a senior police officer; or

(b) a board appointed by the Commissioner.

(2) If the appropriate tribunal is to be a board appointed by the Commissioner, the Commissioner must appoint a board consisting of a superintendent and a chief inspector, and name the superintendent as the President of the board.

(3) A senior police officer may apply to the Commissioner to appoint a board to be the appropriate tribunal, and on the application the Commissioner may either appoint a board under paragraph (2) or refer the case back to that senior police officer to be heard by a single police officer not below the rank of superintendent appointed by the Commissioner or by a senior police officer.

(4) No person who originates a complaint leading to a charge or assists in the investigation of the complaint may act as the appropriate tribunal or become a member of the appropriate tribunal hearing the charge.

#### 5. Preliminary procedure

(1) ~~When~~ If it appears to ~~any~~ a police officer of or above the rank of sergeant that a disciplinary charge ~~or charges~~ should be laid against a junior police officer subordinate to him ~~or her~~ in rank, the appropriate charge ~~or charges may~~ intended to be laid against the junior police officer must be entered in ~~a document entitled the Defaulter Report which shall be the record of the case against such police officer~~, and ~~he shall~~ the junior police officer must be informed of the intended charge ~~or charges~~ as soon as practicable.

(2) If a disciplinary charge is laid against a junior police officer, a senior police officer may—

(a) direct that the charge be heard by an appropriate tribunal consisting of a single police officer; or

(b) apply to the Commissioner to appoint a board to be the appropriate tribunal.

(23) ~~The defaulter shall be notified~~ The junior police officer must be served with a notice in writing ~~of specifying—~~

(a) the charge ~~or charges~~;

(b) (if the charge is to be heard before an appropriate tribunal consisting of a single police officer) the name of the officer constituting the appropriate tribunal;

(c) (if the charge is to be heard before an appropriate tribunal consisting of a board) the names of the persons constituting the board;

(ed) the place of the hearing; and

(de) the time and ~~the~~ date of the hearing, which ~~shall be~~ must not be earlier than 7 clear days after service of the notice.

~~—(3) No person who originates a complaint leading to a charge or assists in the investigation of such complaint shall act as the appropriate tribunal in respect of that charge.~~

## 6. Objection to tribunal officer hearing the case

~~If the defaulter, prior to the hearing, objects to the appropriate tribunal on the grounds of partiality or bias, he shall set out his grounds in full in writing and deliver them to such appropriate tribunal which shall not commence the hearing of the case but shall forward the document to a senior police officer who may appoint another appropriate tribunal to hear the case.~~

(1) If a defaulter objects to an appropriate tribunal on the grounds of partiality or bias—

(a) (where the appropriate tribunal is a superintendent appointed by a senior police officer) the defaulter may, within 7 days from the date of service of a notice under regulation 5(3), apply to the senior police officer for—

(i) an application to be made under regulation 5(2)(b) for the Commissioner's direction that the case be heard by a board instead of by a single police officer; or

(ii) the appointment of another appropriate tribunal consisting of a single police officer;

(b) (where the appropriate tribunal is not a superintendent appointed by a senior police officer) the defaulter may, within 7 days from the date of service of a notice under regulation 5(3), apply to the Commissioner—

(i) to direct that the case be heard by a board instead of by a single police officer; or

(ii) to change any single police officer appointed by the Commissioner or by a senior police officer or to change a

member of the board appointed by the Commissioner.

(2) A senior police officer may, on receiving an application made under paragraph (1)(a)—

(a) reject the application;

(b) apply to the Commissioner to appoint a board to be the appropriate tribunal; or

(c) appoint another appropriate tribunal consisting of a single police officer.

(3) The Commissioner may, on receiving an application made under paragraph (1)(b) or (2)(b)—

(a) reject the application;

(b) direct that the case be heard by a board appointed by the Commissioner instead of by a single police officer; or

(c) appoint another appropriate tribunal.

(4) An application under paragraph (1) must be made in writing, and the hearing must not be commenced before the determination of the application.

## 7. Access to records and documents

A defaulter ~~charged under these regulations shall~~ must be given copies of or reasonable access to ~~such any~~ police records and other documents ~~as he which the defaulter~~ requires, and ~~which~~ are necessary to enable ~~him the defaulter~~ to prepare ~~his the~~ defence, but not including those records for which the Government claims privilege.

### 7A. Appointment of prosecutor

The Commissioner must appoint a prosecutor for the purposes of proceedings against a defaulter under this Part.

### 7B. Representation of defaulter at hearing

(1) A defaulter may be represented at a hearing by—

(a) an inspector, or a junior police officer, of the defaulter's choice;

(b) any other police officer of the defaulter's choice who is a barrister or solicitor;

(c) (subject to the Commissioner's approval) a barrister or solicitor who is not a police officer; or

(d) any other person of the defaulter's choice who is approved by the Commissioner for the purpose,

and the person specified in subparagraph (a), (b), (c) or (d) may conduct the defence on the defaulter's behalf.

(2) If the Commissioner gives approval under paragraph (1)(c), the defaulter



may be represented at the hearing by a barrister or solicitor of the defaulter's choice.

(3) Despite paragraph (1), a defaulter must attend a hearing in person.

(4) If a defaulter is represented at a hearing by a barrister or solicitor, the appropriate tribunal and the prosecutor may separately be assisted by a barrister or solicitor at the hearing.

## 8. Plea of defaulter

~~The defaulter shall appear before the appropriate tribunal and the charge or charges shall be read over to him and he shall be required to plead unequivocally guilty or not guilty and to each charge separately if there is more than one, and such plea shall be recorded.~~

(1) At the hearing, the appropriate tribunal must read to the defaulter any charge against him or her.

(2) The defaulter must plead in person guilty or not guilty to the charge, or to each charge separately if there is more than one, unequivocally.

(3) The appropriate tribunal must enter the plea or pleas on the official record of proceedings.

## 9. Procedure at hearing

~~(1) (Repealed)~~

(21) ~~Where~~ If a defaulter ~~has pleaded~~ pleads not guilty at a hearing and evidence for the prosecution is called, witnesses ~~shall are to~~ be called in support of the charge ~~or charges~~ and, at the conclusion of the evidence of each ~~such of those~~ witnesses, the defaulter or ~~any person appearing on his behalf~~ the defence representative may cross-examine ~~such that~~ witness, who may then be re-examined.

(32) When the examination of all witnesses in support of the charge ~~or charges~~ has been completed, the defaulter or the defence representative may address the appropriate tribunal for the purpose only of showing that no prima facie case has been established.

(3) If it appears to the appropriate tribunal that there is a prima facie case, it must ask if the defaulter ~~shall be asked whether he~~ wishes to—

(a) give evidence; and

(b) call witnesses.

(4) ~~Where a~~ If the defaulter gives evidence, ~~he~~ the defaulter may be cross-examined and re-examined, and ~~such witnesses as he desires to call may, after giving evidence,~~ any witness called by the defaulter may be examined, cross-examined and ~~then be re-examined by the defaulter or any person appearing on his behalf.~~

(5) At the close of the defence case, witnesses may be called with the consent of the appropriate tribunal ~~hearing the case~~ to give evidence in rebuttal, and may be examined, cross-examined and re-examined, ~~and~~.

(6) ~~at~~ At the conclusion of all the evidence, the prosecutor or any barrister or solicitor assisting the prosecutor may address the appropriate tribunal and ~~thereafter the~~

~~defence~~ then the defaulter or the **defence representative** may address the appropriate tribunal in reply.

~~(6) — Such exhibits as are produced by witnesses shall be available for inspection by the defence and the prosecutor.~~

(7) ~~Notwithstanding this regulation, the~~ The appropriate tribunal may—

(a) call ~~any~~ witnesses; and

(b) ask ~~such questions of~~ any witness **any question**,

~~as that~~ it considers ~~will~~ **may** assist it in determining the case.

(8) Evidence must not be taken on oath or affirmation.

(9) The defaulter, the **defence representative**, the prosecutor and **any barrister or solicitor assisting the prosecutor** may inspect any exhibit produced to the appropriate tribunal by a witness.

~~(8)10~~ The appropriate tribunal may adjourn the ~~case~~ **hearing** from time to time, and ~~where~~ if an application is made for an adjournment, ~~it shall be shown the applicant must show to the satisfaction of the appropriate tribunal by the applicant that such a course the adjournment would serve the ends of justice.~~ **and**

(11) ~~any~~ An adjournment granted ~~shall~~ under paragraph (10) must be for a reasonable period only.

~~(9) — The appropriate tribunal shall keep a record of the evidence heard which shall be signed and dated by it and the interpreter, if any, on each adjournment and on the termination of the hearing.~~

~~(10) — Evidence shall not be taken on oath or affirmation.~~

~~(11) — A defaulter may be represented by—~~

~~(a) — an inspector or other junior police officer of his choice; or~~

~~(b) — any other police officer of his choice who is qualified as a barrister or solicitor;~~

~~who may conduct the defence on his behalf.~~

~~(12) — Subject to paragraph (11), no barrister or solicitor may appear on behalf of the defaulter.~~

## 10. Adding or amending charges

(1) A **The prosecutor** may amend a charge ~~may be amended~~ or add a further charge ~~added~~ at any time ~~prior to~~ before the appropriate tribunal communicates a finding to the defaulter. ~~being communicated to a defaulter charged under these regulations and~~

(2) ~~any~~ The appropriate tribunal must read and explain any amended or new charge to the defaulter. ~~shall be read and explained to such defaulter who shall—~~

(3) The defaulter must plead in person to the amended or new charge, or to each amended or new charge separately if there is more than one, and he or she—

~~(a) — be called upon to plead thereto; and~~

(~~ba~~) ~~be~~ is entitled to a reasonable adjournment to prepare ~~his~~ a further defence;

~~and in such case a defaulter may—~~

(~~ib~~) may recall any witness~~es~~; and

(~~ic~~) may call ~~such~~ any further witness~~es~~ as he or she thinks fit.

(4) ~~and any~~ A witness giving evidence under this regulation may be cross-examined and re-examined.

## 10A. Record of proceedings

(1) The appropriate tribunal must make, or cause to be made, a written record of the proceedings of a hearing, and the record is to form part of the Defaulter Report.

(2) The appropriate tribunal may make, or cause to be made, an audio recording or an audio and visual recording of the proceedings, or any part of the proceedings, of a hearing.

## 11. ~~Proceedings after hearing~~Finding by appropriate tribunal

(1) The appropriate tribunal ~~shall~~ may at the conclusion of the hearing announce its finding on ~~the charges~~ a charge or ~~shall~~ reserve its finding. ~~The finding shall be entered on the Defaulter Report,~~ and if the finding ~~has been~~ is reserved, the appropriate tribunal ~~shall~~ must call the defaulter to appear in person before it ~~to~~ when it announces its finding.

(2) The appropriate tribunal must endorse the finding on the Defaulter Report.

(~~23~~) If the defaulter has pleaded guilty or is found guilty, ~~he shall be asked if he~~ the appropriate tribunal must ask if the defaulter wishes to make or produce to the appropriate tribunal a statement ~~on relevant matters~~ which ~~he desires~~ contains any relevant matters that the defaulter wishes to be taken into consideration, ~~and any statement so made shall be recorded~~ by the appropriate tribunal.

## 11A. Award by single member tribunal

(~~31~~) If the appropriate tribunal consists of a single police officer (“single member tribunal”) and the defaulter has pleaded guilty or is found guilty, the ~~appropriate~~ single member tribunal ~~shall~~ may then announce its award or ~~shall~~ reserve its award. ~~The award shall be endorsed on the Defaulter Report,~~ and if the award ~~has been~~ is reserved, the ~~appropriate~~ single member tribunal ~~shall~~ must call the defaulter to appear in person before it ~~to~~ when it announces its award.

(2) The single member tribunal must endorse the award on the Defaulter Report.

(3) The single member tribunal must send the Defaulter Report to the Force Discipline Officer.

(4) If the defaulter has pleaded guilty or is found guilty and the ~~appropriate~~ single member tribunal considers that no punishment should be awarded, it ~~shall~~

must—

- (a) endorse the Defaulter Report to that effect; ~~and~~
- (b) send the Defaulter Report to the Force Discipline Officer; and
- (bc) ~~advise—inform~~ the defaulter ~~personally~~ of the ~~endorsement—acts~~ mentioned in subparagraphs (a) and (b).

~~(5) —(Repealed)~~

~~(65) Where a defaulter pleads—~~ If the defaulter has pleaded guilty or is found guilty and the ~~appropriate—single member~~ tribunal considers that the punishment ~~which~~ it can award is insufficient, it ~~shall—must~~ not make an award, ~~but shall and it must—~~

- (a) endorse the Defaulter Report to that effect;
- (b) send the Defaulter Report to ~~a senior police officer~~ the Force Discipline Officer; and
- (c) inform the defaulter of ~~that action~~, the acts mentioned in subparagraphs (a) and (b).

~~and, subject to these regulations, the senior police officer may make an award which he shall communicate to the defaulter personally.~~

## 11B. Board tribunal to send Defaulter Report to Force Discipline Officer

If the appropriate tribunal consists of a board appointed by the Commissioner and the defaulter has pleaded guilty or is found guilty, the appropriate tribunal must send the Defaulter Report to the Force Discipline Officer and inform the defaulter of that fact.

## 12. Review

(1) The appropriate tribunal hearing a case ~~under these regulations—~~ may, at any time within 7 days after having announced its finding or award to the defaulter, review the case and arrive at a ~~different—fresh~~ finding or award which ~~shall~~, subject to paragraph (23), ~~stand in place of—is to be substituted for~~ the original finding or award ~~and be binding on the defaulter.~~

(2) ~~When—~~ If the appropriate tribunal reviews a case, it ~~shall—call—must~~ announce before the defaulter or communicate in writing to the defaulter ~~before it to announce~~ its finding or award ~~on—after~~ the review, ~~but.~~

(3) The appropriate tribunal must ~~shall—~~not—

- (a) substitute for a finding of not guilty a finding of guilty; or
- (b) award a greater punishment,

unless the defaulter is given an opportunity of making ~~oral~~ representations ~~to it—~~ as to why the ~~original finding should not be varied~~ or the original punishment should not be increased.

(4) The appropriate tribunal must—

- (a) endorse its finding or award after the review on the Defaulter Report;

and

(b) send the Defaulter Report to the Force Discipline Officer.

(35) ~~Any~~ A review under this regulation ~~shall be~~ is at the sole discretion of the appropriate tribunal ~~hearing the case~~ and may be made—

(a) on the appropriate tribunal's own motion; or

(b) on application to the appropriate tribunal in writing by either the prosecutor or the defaulter ~~in writing~~.

## 12A. Proceedings in defaulter's absence

Where a defaulter is required to appear in person in any proceedings under this Part and repeatedly fails to appear, the appropriate tribunal may proceed in the defaulter's absence if satisfied that the defaulter has no reasonable excuse for the failures.

## 13. Punishment of junior police officers

(1) ~~Any~~ A junior police officer who ~~has pleaded guilty to or is found guilty of a disciplinary offence before or by an appropriate tribunal consisting of a single police officer of any of the offences against discipline specified in regulation 3(2)~~ may, subject to regulation 30, be awarded any of the following punishments by the appropriate tribunal—

(a) caution;

(b) reprimand;

(c) severe reprimand;

(d) deferment or stoppage of increment;

(~~de~~) forfeiture of not more than ~~one~~ 1 month's pay except in the case of absence without good cause when forfeiture of pay ~~shall~~ extends to ~~cover~~ the period of absence in addition to any other punishment awarded;

(~~ef~~) reduction in rank;

(~~fg~~) an order to resign ~~forthwith~~ immediately without salary in lieu of notice;

(~~gh~~) compulsory retirement with full retirement benefits or reduced retirement benefits or without retirement benefits; ~~or~~

(~~hi~~) dismissal without retirement benefits.

~~(2) —(Repealed)~~

~~(3) —Where the appropriate tribunal does not award any punishment and refers its findings to a senior police officer to make an award, the senior police officer may exercise all the powers of punishment conferred upon him by regulation 30.~~

(2) If a junior police officer has pleaded guilty to or is found guilty of a disciplinary offence before or by an appropriate tribunal, and the appropriate tribunal

sends the Defaulter Report to the Force Discipline Officer under regulation 11A(4)(b) or (5)(b) or 11B, the junior police officer may, subject to regulation 14, be awarded a punishment that the Force Discipline Officer is empowered to award under regulation 30.

(3A) ~~Where an appropriate tribunal refers its findings to a senior police officer under paragraph (3) he may, if he—~~ If a Defaulter Report is sent to the Force Discipline Officer under regulation 11A(4)(b) or (5)(b) or 11B, and the Force Discipline Officer is of the opinion that the junior police officer does not deserve to be punished but that the proceedings disclose grounds for requiring the junior police officer to retire in the public interest, ~~the Force Discipline Officer may, without further proceedings require him—the junior police officer~~ to retire in the public interest.

(4) ~~Notwithstanding—~~ Despite this regulation, a junior police officer ~~who found guilty of any offence specified in regulation 3(2) and—(a)—~~

(a) has pleaded guilty to or is found guilty of a disciplinary offence; and

~~(#b) is to be~~ dismissed from the police force by the Commissioner, the Force Discipline Officer or a senior police officer,

~~shall, where appropriate, must, if he or she is a station sergeant or sergeant, be reduced to the ranks before the dismissal; or.~~

(5) Despite this regulation, a junior police officer who—

(a) has pleaded guilty to or is found guilty of a disciplinary offence; and

(b) ~~has been~~ ordered by the Commissioner, the Force Discipline Officer or a senior police officer to resign ~~forthwith—immediately~~ from the police force,

~~shall—must, if he or she fails to do so—~~ comply with the order, be dismissed without retirement benefits ~~under paragraph (3).~~

#### **14. Confirmation or variation of finding or award and making of award by Force Discipline Officer**

~~(1) Within 14 days from the date of any finding or award made by an appropriate tribunal, a senior police officer shall—~~

~~(a) in respect of the finding—~~

~~(i) confirm the finding; or~~

~~(ii) vary the finding and substitute any finding which the appropriate tribunal could have made on the evidence adduced; or~~

~~(iii) subject to paragraph (3)(e), set aside the finding and order a rehearing of the case on the same or other charges by another appropriate tribunal;~~

~~(b) in respect of any award, where he confirms or varies the finding—~~

~~(i) if no punishment was awarded, award any punishment that he is empowered to award; or~~

~~(ii) confirm the award; or~~

~~(iii) remit the award; or~~

~~(iv) subject to paragraph (3)(a) and (b), substitute any other award that he is empowered to award; or~~

~~(c) where the appropriate tribunal has sent the Defaulter Report to him because it considers the punishment which it can award is insufficient, make an award which he shall announce personally or communicate in writing to the defaulter.~~

~~(2) A senior police officer shall not act under paragraph (1) if he has originated or assisted in the investigation of the complaint leading to the proceedings.~~

~~(3) A senior police officer shall not—~~

~~(a) substitute for any award made by an appropriate tribunal any greater award without first calling on the defaulter to show cause why such award should not be increased; or~~

~~(b) substitute for a finding of not guilty a finding of guilty; or~~

~~(c) order a rehearing where the finding was one of not guilty.~~

~~(4) A senior police officer acting under this regulation shall announce personally or communicate in writing to the defaulter the action taken by him, and shall forward the Defaulter Report to the Force Discipline Officer.~~

~~(5) Within 14 days of from the receipt by him of a Defaulter Report forwarded to him under paragraph (4) by the Force Discipline Officer under regulation 11A(3), (4)(b) or (5)(b), 11B or 12(4)(b), the Force Discipline Officer shall, except where a senior police officer has ordered a rehearing of the case under paragraph (1)(a)(iii) must—~~

~~(a) in respect of the finding—~~

~~(i) confirm the finding; or~~

~~(ii) vary the finding and substitute any finding which the appropriate tribunal could have made on the evidence adduced; or~~

~~(iii) subject to paragraph (62)(c), set aside the finding and order a rehearing of the case on the same or other charges by another appropriate tribunal;~~

~~(b) in respect of any award, where he if the Force Discipline Officer confirms or varies the finding—~~

~~(i) if no punishment was awarded, award any a punishment that he the Force Discipline Officer is empowered to award; or~~

~~(ii) confirm the award; or~~

~~(iii) remit the award; or~~

~~(iv) subject to paragraph (62)(a) and (b), substitute any other award that the senior police officer Force Discipline Officer is empowered to award.~~

~~(62) The Force Discipline Officer shall must not—~~

- (a) substitute for any ~~award-made-punishment awarded~~ any greater punishment ~~award without first calling on unless~~ the defaulter ~~to show cause~~ is given an opportunity of making representations to the Force Discipline Officer as to why ~~such award~~ the original punishment should not be increased; ~~or~~
- (b) substitute for a finding of not guilty a finding of guilty; or
- (c) order a rehearing ~~where if~~ the finding, as confirmed or varied, ~~was is~~ one of not guilty.

(73) The Force Discipline Officer acting under this regulation ~~shall~~ must announce ~~personally before the defaulter~~ or communicate in writing to the defaulter the action taken by ~~him~~ the Force Discipline Officer.

## 15. Appeals by junior police officers

(1) A junior police officer may within 14 days ~~of from~~ the announcement to him ~~or her~~ by, or, ~~as the case may be,~~ the receipt of a communication from, the Force Discipline Officer of ~~any a~~ finding, decision or ~~punishment award~~, appeal in writing to the Commissioner by petition, which ~~shall may~~ contain ~~such any~~ representations ~~as may be~~ relevant to the appeal.

(2) ~~Upon~~ On an appeal under this regulation the Commissioner may-

- (a) vary any finding and substitute any finding which ~~he the~~ Commissioner could have made on the evidence adduced; ~~or~~

(b) remit any award;

- (~~bc~~) order a rehearing of the case on the same or other charges by another appropriate tribunal; ~~or~~

- (~~ed~~) substitute any other ~~punishment award~~ that ~~he the~~ Commissioner is empowered to award; ~~or~~

(e) if the Commissioner is of the opinion that the junior police officer does not deserve to be punished but that the proceedings disclose grounds for requiring the junior police officer to retire in the public interest, without further proceedings, require the junior police officer to retire in the public interest.

(3) ~~Upon~~ On an appeal under this regulation, the Commissioner—

- (a) may permit the defaulter to appear before ~~him the~~ Commissioner in person to support ~~his the~~ appeal;
- (b) ~~subject to these regulations,~~ may hear ~~such any~~ additional evidence ~~as he that the~~ Commissioner considers relevant; and
- (c) ~~subject to these regulations, shall must~~ announce ~~personally before the defaulter~~ or communicate in writing to the defaulter the outcome of the appeal or the action taken under this regulation.

(4) ~~In every case where If~~ an appeal is ~~has been~~ lodged under this regulation, any punishment awarded (other than a caution, reprimand or severe reprimand; ~~reprimand or caution~~) ~~shall must~~ be suspended pending the determination of the appeal.



### PART III

#### INSPECTORS: INVESTIGATION INTO DISCIPLINARY OFFENCES, PUNISHMENT AND APPEALS

#### 16. Appropriate tribunal

(1) For the purposes of this ~~Part~~—

“appropriate tribunal” (適當審裁體) means—

(a) a single police officer not below the rank of superintendent appointed by the Commissioner or by a senior police officer;

~~(b) a senior police officer;~~

~~(c)~~ a board appointed by the Commissioner; ~~or~~

~~(d)~~ a board appointed by the ~~Chief Secretary for Administration~~ **Secretary for the Civil Service**.

(2) ~~Where~~ If the appropriate tribunal is to be a board appointed by the Commissioner, the Commissioner ~~shall~~ must appoint a board ~~comprising~~ consisting of 2 police officers of or above the rank of superintendent, ~~and name one of whom he shall name them~~ as the President of the board, ~~to hear the charge or charges~~.

(3) A senior police officer may apply to the Commissioner to appoint a board to be the appropriate tribunal, and on ~~such the~~ application the Commissioner may, ~~subject to paragraphs (4) and (5)~~, either appoint a board under paragraph (2) or refer the case back to that senior police officer to be heard by a single police officer ~~nominated not below the rank of superintendent appointed~~ by the Commissioner or ~~by~~ a senior police officer.

(4) ~~If~~ On an application under paragraph (3), if the Commissioner is of the opinion that there are exceptional circumstances in the case ~~he may~~, the Commissioner must request the ~~Chief Secretary for Administration~~ **Secretary for the Civil Service** to appoint a board to be the appropriate tribunal.

~~(4A5)~~ If On an application under paragraph (3), if the Commissioner is of the opinion that there are no exceptional circumstances ~~in the case~~, but the defaulter so requests, the Commissioner ~~shall~~ must refer ~~such the~~ request to the ~~Chief Secretary for Administration~~ **Secretary for the Civil Service** to appoint a board to be the appropriate tribunal.

~~(4B6)~~ In exercising ~~his the~~ discretion whether or not to appoint a board to be the appropriate tribunal, the ~~Chief Secretary for Administration shall~~ **Secretary for the Civil Service** must take into account any representations made in writing by the Commissioner and the defaulter.

~~(57)~~ ~~Where~~ If the appropriate tribunal is to be a board appointed by the ~~Chief Secretary for Administration~~ **Secretary for the Civil Service**, the ~~Chief Secretary for Administration shall~~ **Secretary for the Civil Service** must appoint a board ~~comprising~~ consisting of 3 public ~~servants~~ officers, and name one of ~~whom he shall name them~~ as the President of the board ~~to hear the charge or charges, and such a board shall comply with these regulations~~.

(68) No person who originates a complaint leading to a charge or assists in the investigation of ~~such the~~ complaint ~~shall may~~ act as the appropriate tribunal ~~in respect of that~~ or become a member of the appropriate tribunal hearing the charge.

## 17. Preliminary procedure

~~(1) (2) (Repealed)~~

(31) ~~Where~~ If it appears to a senior police officer that a disciplinary charge ~~or charges~~ should be laid against an inspector, **the appropriate charge intended to be laid against the inspector must be entered in the Defaulter Report.**

(2) If a disciplinary charge is laid against an inspector, the senior police officer ~~he may~~—

- (a) direct that the charge ~~or charges~~ be heard by an appropriate tribunal consisting of a single police officer; or
- (b) apply to the Commissioner to appoint a board to be the appropriate tribunal.—

(43) ~~Where a charge or charges are to be heard before an appropriate tribunal consisting of a single police officer, the defaulter shall be notified~~ The inspector must be served with a notice in writing ~~of specifying—~~

- (a) the charge ~~or charges~~;
- (b) (if the charge is to be heard before an appropriate tribunal consisting of a single police officer) the name of the officer constituting the appropriate tribunal;
- (c) (if the charge is to be heard before an appropriate tribunal consisting of a board) the names of the persons constituting the board;
- ~~(ed)~~ the place of the hearing; and
- ~~(de)~~ the time and date of the hearing, which ~~shall must~~ not be earlier than 7 clear days after service of the notice.

~~(5) (a) Where a charge or charges are to be heard before an appropriate tribunal consisting of a board, a copy of the charge or charges shall be served upon the defaulter together with a notice—~~

~~(i) of the names of the persons constituting the board;~~

~~(ii) that he is required to plead guilty or not guilty thereto unequivocally in writing and to each charge separately if there is more than one within 7 days of receipt of the charge or charges;~~

~~(iii) that if he desires to plead guilty he may forward to the appropriate tribunal in writing any relevant matter which he desires to be taken into consideration.~~

~~(b) On receipt of the defaulter's plea, the appropriate tribunal shall fix a date for the hearing of the charge or charges, and shall notify the defaulter thereof, where the plea is one of not guilty, such date shall be a date not earlier than 7 days from the date of service of such notice.~~

## 18. Objection to tribunal

(1) If a defaulter objects to ~~the~~<sup>an</sup> appropriate tribunal on the grounds of partiality or bias, ~~he the defaulter~~ may, within 7 days ~~after being informed of the manner in which the case shall be heard~~ from the date of service of a notice under regulation 17(3), apply to the Commissioner—

- (a) to direct that the case be heard by a board instead of ~~by~~ a single police officer;
- (b) to change any single police officer appointed by ~~him the Commissioner~~ or by a senior police officer or to change a member of the board appointed by ~~him the Commissioner~~ ~~but only on grounds of partiality or bias which shall be fully set out~~; or
- (c) to request the ~~Chief Secretary for Administration~~ <sup>Secretary for the Civil Service</sup> to appoint a board to be the appropriate tribunal.

~~(2) Any application under this regulation shall be made in writing, and the hearing shall be stayed pending the determination of the application.~~

(32) ~~If the~~ The Commissioner ~~grants~~ may, on receiving an application made under paragraph (1)(a) or (b) ~~he may~~—

- (a) reject the application;
- ~~(ab)~~ direct that the case be heard by a board appointed by ~~him the Commissioner~~ instead of by a single police officer; or
- ~~(bc)~~ appoint another appropriate tribunal ~~as though no earlier appointment had been made by him.~~

(43) ~~If the defaulter has applied to the Commissioner to request the Chief Secretary for Administration to appoint a board to be the appropriate tribunal the Commissioner shall forward such request to the Chief Secretary for Administration in accordance with regulation 16(4A). If the defaulter has made an application under paragraph (1)(c), the Commissioner must refer the request to the~~ <sup>Secretary for the Civil Service</sup> in accordance with regulation 16(5) as if that regulation applied.

(4) An application under paragraph (1) must be made in writing, and the hearing must not be commenced before the determination of the application.

## 18A. Access to records and documents

A defaulter must be given copies of or reasonable access to any police records and other documents which the defaulter requires, and are necessary to enable the defaulter to prepare the defence, but not including those records for which the Government claims privilege.

## 18B. Appointment of prosecutor

The Commissioner must appoint a prosecutor for the purposes of proceedings against a defaulter under this Part.

**18C. Representation of defaulter at hearing**

(1) A defaulter may be represented at a hearing by—

(a) an inspector of the defaulter's choice;

(b) any other police officer of the defaulter's choice who is a barrister or solicitor;

(c) (subject to the Commissioner's approval) a barrister or solicitor who is not a police officer; or

(d) any other person of the defaulter's choice who is approved by the Commissioner for the purpose,

and the person specified in subparagraph (a), (b), (c) or (d) may conduct the defence on the defaulter's behalf.

(2) If the Commissioner gives approval under paragraph 1(c), the defaulter may be represented at the hearing by a barrister or solicitor of the defaulter's choice.

(3) Despite paragraph (1), a defaulter must attend a hearing in person.

(4) If a defaulter is represented at a hearing by a barrister or solicitor, the appropriate tribunal and the prosecutor may separately be assisted by a barrister or solicitor at the hearing.

**19. Procedure (Repealed)**

~~(1) The Commissioner or a senior police officer shall appoint a prosecutor and the defaulter may be represented by—~~

~~(a) an inspector of his choice; or~~

~~(b) any other police officer of his choice who is qualified as a barrister or solicitor;~~

~~who may conduct the defence on his behalf.~~

~~(2) Subject to paragraph (1), no barrister or solicitor may appear on behalf of the defaulter.~~

~~(3) A defaulter shall be given copies of or reasonable access to such police records and documents as he requires and which are necessary to enable him to prepare his defence but not including those records for which the Government claims privilege.~~

**20. Plea of defaulter-inspector charged**

~~Proceedings shall be conducted by an appropriate tribunal and the charge or charges shall be read over to the defaulter who shall be required to plead unequivocally guilty or not guilty thereto and to each charge separately if there is more than one, and such plea shall be recorded~~

~~(1) At the hearing, the appropriate tribunal must read to the defaulter any~~

charge against him or her.

(2) The defaulter must plead in person guilty or not guilty to the charge, or to each charge separately if there is more than one, unequivocally.

(3) The appropriate tribunal must enter the plea or pleas on the official record of proceedings.

## 21. ~~Hearing~~Procedure at hearing

(1) ~~When the-~~If a defaulter ~~has pleaded-~~pleads not guilty at a hearing and evidence for the prosecution is called, witnesses ~~shall are to~~ be called in support of the charge ~~or charges-~~and ~~on,~~ at the conclusion of the evidence of each ~~such of those~~ witnesses, the defaulter or ~~any person appearing on his behalf the~~ defence representative may cross-examine ~~such that~~ witness, who may then be re-examined ~~by the prosecutor.~~

(2) When the examination of all witnesses in support of the charge ~~or charges~~ has been completed, ~~the defaulter or~~ the defence representative may address the appropriate tribunal for the purpose only of showing that no prima facie case has been established ~~and.~~

(3) ~~if~~ If it appears to the appropriate tribunal that there is a prima facie case, it must ask if the defaulter ~~shall be asked whether he~~ wishes to—

- (a) give evidence; and
- (b) call witnesses.

(34) If the defaulter gives evidence, ~~he the defaulter~~ may be cross-examined and re-examined, and ~~such witnesses as he wishes to-~~any witness called by the defaulter may be examined, cross-examined and re-examined.

(45) At the close of the defence case, witnesses may be called with the consent of the appropriate tribunal ~~hearing the case-~~to give evidence in rebuttal, and may be examined, cross-examined and re-examined ~~and.~~

(6) ~~at-~~At the conclusion of all the evidence, the prosecutor or any barrister or solicitor assisting the prosecutor may address the appropriate tribunal and ~~thereafter then~~ the defaulter or the defence representative may address the appropriate tribunal in reply.

~~(5) Such exhibits as are produced by witnesses shall be available for inspection by the defence and the prosecutor.~~

(67) ~~Notwithstanding this regulation, the-~~The appropriate tribunal ~~hearing the case-~~may—

- (a) call ~~any~~ witnesses; and
- (b) ask ~~such any witness any questions of any witness,~~

~~as that~~ it considers ~~will~~ may assist it in determining the case.

(8) Evidence must not be taken on oath or affirmation.

(9) The defaulter, the defence representative, the prosecutor and any barrister or solicitor assisting the prosecutor may inspect any exhibit produced to the appropriate tribunal by a witness.

(710) The appropriate tribunal may adjourn the ~~case-~~hearing from time to time,

and ~~where-if~~ an application is made for an adjournment, ~~it shall be shown by the applicant that such a course must show to the satisfaction of the appropriate tribunal that the adjournment would serve the ends of justice.-and~~

(11) ~~any~~-An adjournment granted ~~shall~~-under paragraph (10) must be for a reasonable period only.

(8) ~~—The appropriate tribunal shall keep a record of the evidence heard which shall be signed and dated by it and by the interpreter, if any, on each adjournment and on the termination of the hearing.~~

(9) ~~—Evidence shall not be taken on oath or affirmation.~~

## 22. Adding or amending charges

(1) A ~~The prosecutor~~ may amend a charge ~~may be amended~~ or add a further charge ~~added~~ at any time ~~prior to~~ before the appropriate tribunal communicates a finding ~~being communicated~~ to the defaulter ~~under these regulations~~.

(2) The appropriate tribunal must read and explain any amended or new charge ~~shall be read and explained to such the defaulter who shall—~~.

(3) The defaulter must plead in person to the amended or new charge, or to each amended or new charge separately if there is more than one, and he or she—

(a) ~~—be called upon to plead thereto; and~~

(ba) ~~be~~-is entitled to a reasonable adjournment to prepare ~~his~~-a further defence;

~~and in such a case a defaulter may—~~

(ib) may recall any witnesses; and

(ic) may call ~~such any~~ further witnesses as he or she thinks fit, ~~and~~

(4) ~~any~~-A witness giving evidence under this regulation may be cross-examined and re-examined.

## 22A. Record of proceedings

(1) The appropriate tribunal must make, or cause to be made, a written record of the proceedings of a hearing, and the record is to form part of the Defaulter Report.

(2) The appropriate tribunal may make, or cause to be made, an audio recording or an audio and visual recording of the proceedings, or any part of the proceedings, of a hearing.

## 23. ~~Proceedings after hearing~~Finding by appropriate tribunal

(1) The appropriate tribunal ~~conducting the hearing shall—~~may at the conclusion of the hearing announce its finding on ~~the charges a charge or shall~~ reserve its finding. ~~The finding shall be entered on the record~~, and if the finding ~~has been~~-is reserved, the appropriate tribunal ~~shall~~-must call the defaulter to appear in person before it ~~to when it~~ announces its finding.

(2) The appropriate tribunal must endorse the finding on the Defaulter Report.

(23) If the defaulter has pleaded guilty or is found guilty, ~~he shall be asked the~~ appropriate tribunal must ask if ~~he the defaulter~~ wishes to make or produce to the appropriate tribunal a statement which ~~shall then be made or produced to the appropriate tribunal and such statement shall contain such~~ contains any relevant matters ~~as he desires that the defaulter wishes to be taken into consideration by the appropriate tribunal.~~

~~(2A) Where the appropriate tribunal is a board appointed by the Chief Secretary for Administration or a board appointed by the Commissioner and the defaulter has pleaded guilty or is found guilty, the board shall endorse its findings on the record and send the record to the Commissioner to make an award.~~

### 23A. Award by single member tribunal

(31) If the appropriate tribunal consists of a single police officer (“single member tribunal”) and ~~thea~~ defaulter has pleaded guilty or is found guilty, the ~~appropriate single member tribunal, other than a board, shall~~ may then announce its award or ~~shall reserve its award.~~, ~~The award shall be endorsed on the record,~~ and if the award ~~has been~~ is reserved, the ~~appropriate single member tribunal shall~~ must call the defaulter to appear in person before it ~~to when it announces~~ its award.

(2) The single member tribunal must endorse the award on the Defaulter Report.

(3A) If the defaulter has pleaded guilty or is found guilty and the ~~appropriate single member tribunal, other than a board,~~ considers that no punishment should be awarded, it ~~shall~~ must—

- (a) endorse the ~~record~~ Defaulter Report to that effect; and
- (b) ~~advise~~ inform the defaulter ~~personally~~ of the endorsement.

(4) ~~Where a~~ If the defaulter has pleaded guilty or ~~has been~~ is found guilty, and the ~~appropriate single member tribunal, other than a board,~~ considers that the punishment ~~which~~ it can award is insufficient, it must not make an award, and it must— ~~the record shall be endorsed accordingly and shall be sent to the Commissioner and the defaulter shall be informed of this action.~~

- (a) endorse the Defaulter Report to that effect;
- (b) send the Defaulter Report to the Commissioner; and
- (c) inform the defaulter of the acts mentioned in subparagraphs (a) and (b).

~~(5) Where the appropriate tribunal is a senior police officer or superintendent and the defaulter pleads guilty or is found guilty, it may make an award which it shall—~~

- ~~(a) endorse on the record; and~~
- ~~(b) communicate together with the finding personally to the defaulter.~~

~~(6)-(7) (Repealed)~~

**23B. Board tribunal to send Defaulter Report to Commissioner**

If the appropriate tribunal consists of a board appointed by the Commissioner or by **the Secretary for the Civil Service** and the defaulter has pleaded guilty or is found guilty, the appropriate tribunal must send the Defaulter Report to the Commissioner and inform the defaulter of that fact.

**23C. Award or reference to Chief Executive by Commissioner**

~~(8) Where the case is referred to the Commissioner under paragraph (2A) or (4) the Commissioner may make an award which he shall endorse on the record and announce personally or communicate in writing to the defaulter, and where the Commissioner considers that the punishment which he can award is insufficient, he shall endorse the record accordingly and shall forward such record to the Chief Executive under regulation 27.~~

(1) If a case is referred to the Commissioner under regulation 23A(4)(b) or 23B, the Commissioner may make an award, and must—

- (a) endorse the award on the Defaulter Report; and
- (b) announce the award before the defaulter or communicate it in writing to the defaulter.

(2) If the Commissioner considers that the punishment which the Commissioner can award is insufficient, the Commissioner must not make an award, and the Commissioner must—

- (a) endorse the Defaulter Report to that effect;
- (b) forward the Defaulter Report to the Chief Executive under regulation 27; and
- (c) inform the defaulter of the acts mentioned in subparagraphs (a) and (b).

**24. Review**

(1) The appropriate tribunal hearing a case ~~under these regulations~~ may, at any time within 7 days after having announced its finding or award to the defaulter, review the case and arrive at a ~~different~~ **fresh** finding or award which ~~shall~~, subject to paragraph (23), ~~stand in place of~~ **is to be substituted for** the original finding or award ~~and be binding on the defaulter~~.

(2) ~~When~~ **If** the appropriate tribunal reviews a case, it ~~shall~~ **must** announce ~~personally before the defaulter~~ or communicate in writing ~~to the defaulter~~ its finding or award ~~on after the review to the defaulter, but~~.

(3) The appropriate tribunal must ~~shall~~ **not**—

- (a) **substitute for a finding of not guilty a finding of guilty; or**
- (b) **award a greater punishment,**

unless the defaulter is given an opportunity of making **oral** representations ~~to it~~ as to why the **original finding should not be varied** or the original punishment should not be



increased.

(4) The appropriate tribunal must endorse its finding or award after the review on the Defaulter Report.

(35) ~~Any~~A review under this regulation ~~shall be~~is at the sole discretion of the appropriate tribunal ~~hearing the case~~and may be made—

- (a) on the appropriate tribunal's own motion; or
- (b) on application to ~~it~~the appropriate tribunal in writing by either the prosecutor or the defaulter.

#### 24A. Proceedings in defaulter's absence

Where a defaulter is required to appear in person in any proceedings under this Part and repeatedly fails to appear, the appropriate tribunal may proceed in the defaulter's absence if satisfied that the defaulter has no reasonable excuse for the failures.

### 25. Punishment of inspectors

(1) ~~Any~~An inspector who has pleaded guilty to or is found guilty of a disciplinary offence before or by an appropriate tribunal consisting of a single police officer ~~other than a board of any of the offences against discipline specified in regulation 3(2)~~may, subject to regulation 30, be punished by ~~such~~the appropriate tribunal with—

- (a) caution; or
- (b) reprimand.

(2) In place of or in addition to ~~any of the a~~ punishments ~~specified in under~~ paragraph (1), an inspector may be punished by the Commissioner with—

- (a) in the case of a chief inspector, reduction in rank to senior inspector or inspector; ~~or~~
- (b) in the case of a senior inspector, reversion in rank to inspector; ~~or~~  
(~~bac~~)severe reprimand; ~~or~~
- (~~ed~~) deferment or stoppage of increment; or
- (~~de~~) forfeiture of not more than 1 month's pay except in the case of absence without good cause when forfeiture of pay ~~shall~~extends to ~~cover~~the period of absence in addition to any other punishment awarded.

~~(3) Where a senior police officer or superintendent awards no punishment and refers the findings of the appropriate tribunal to the Commissioner to make an award, the Commissioner may exercise all the powers of punishment conferred by paragraphs (1) and (2).~~

(3) If a case is referred to the Commissioner under regulation 23A(4)(b) or 23B, the Commissioner may award any of the punishments referred to in paragraphs (1) and (2).

## 26. Appeals by inspectors

(1) An inspector may within 14 days ~~of from~~ the announcement to him ~~or her~~ by, or ~~as the case may be~~, the receipt of a communication from, the Commissioner or an appropriate tribunal of ~~any a~~ finding or ~~award~~ ~~punishment~~—

- (a) ~~where~~ (if the appropriate tribunal was a board appointed by the Commissioner or by the ~~Chief Secretary for Administration~~, ~~Secretary for the Civil Service~~) appeal in writing to the Chief Executive by petition which ~~shall~~ ~~may~~ contain ~~such~~ ~~any~~ representations ~~as may be~~ relevant to the appeal; ~~and or~~
- (b) (in any other case); appeal in writing to the Commissioner by petition, which may contain any representations relevant to the appeal.

(2) ~~Any~~ ~~An~~ inspector who has appealed to the Commissioner under paragraph (1) ~~(b)~~ and—

- (a) has been awarded ~~any a~~ punishment by the Commissioner under regulation 25 ~~(12)~~ or ~~(23)~~; or
- (b) is aggrieved by any other decision made by the Commissioner,

may, within 14 days ~~of from~~ the receipt of communication of ~~such~~ ~~the~~ award or decision, appeal in writing to the Chief Executive by petition, which ~~shall~~ ~~may~~ contain ~~such~~ ~~any~~ representations ~~as may be~~ relevant to the appeal.

(3) ~~Upon any~~ ~~On~~ an appeal under paragraph (1) or (2), the Chief Executive may—

- ~~(a) confirm or remit the punishment awarded by the Commissioner;~~
- ~~— (b) substitute in its place any punishment the Commissioner could have awarded;~~
- ~~— (c) confirm, vary or revoke any other decision made by the Commissioner; or~~
- ~~(da)~~ set aside ~~any a~~ finding ~~of an appropriate tribunal~~ if in all the circumstances of the case ~~he~~ ~~the~~ Chief Executive considers justice so requires and either—
  - (i) award ~~such a~~ punishment ~~as is~~ warranted by any finding which has not been set aside; or
  - (ii) award no punishment if ~~there is no such that~~ finding ~~does not~~ exist;
- (b) confirm or remit an award;
- (c) substitute any other award that the Commissioner could have awarded under regulation 25;
- (d) confirm, vary or revoke any other decision made by the Commissioner; or
- (e) order a rehearing of the case on the same or other charges by another

appropriate tribunal.

(4) The Chief Executive's decision ~~upon any-an~~ appeal under paragraph (1) or (2) ~~and upon any or on a~~ reference under regulation 27 ~~shall-must~~ be communicated to the Commissioner and to the inspector by the ~~Chief-Secretary-for-Administration~~ Chief Executive's Office.

(5) The Commissioner may, ~~upon any-on an~~ appeal ~~by an-inspector-under~~ paragraph (1) or of ~~his-the~~ Commissioner's own motion—

- (a) confirm ~~any-a~~ finding of guilty or substitute a finding of not guilty;
- (b) confirm or remit an award;
- ~~(bc) confirm any award or vary any award by substituting an award specified in-~~substitute any other award that the Commissioner could have awarded under regulation 25~~(1) or (2)~~, except that no greater ~~award-shall-punishment~~ may be awarded ~~made-unless~~ the inspector is given an opportunity of making representations as to ~~show-cause~~ why the ~~award-original~~ punishment should not be increased;
- ~~(bad)~~ forward ~~a-report-the~~ Defaulter Report to the Chief Executive under regulation 27; or
- ~~(c)-remit any punishment awarded; or~~
- ~~(de)~~ order a rehearing of the case on the same or other charges ~~before-by~~ another appropriate tribunal.

(6) ~~In every case where-~~If an appeal ~~has-been-is~~ lodged under this regulation, any punishment awarded (other than a caution, reprimand or severe reprimand; ~~reprimand or caution~~) ~~shall-must~~ be suspended pending the determination of the appeal.

## 27. Commissioner may report to Chief Executive

(1) ~~Where any-~~If an inspector has pleaded guilty to or is found guilty of ~~any-of the offences against discipline specified in regulation 3(2)-a~~ disciplinary offence and it appears to the Commissioner that the nature of the offence is so aggravated and other relevant circumstances are such that dismissal without retirement benefits, or compulsory retirement with full retirement benefits or reduced retirement benefits or without retirement benefits is merited, the Commissioner ~~shall-must~~ forward to the Chief Executive ~~a-report-containing the~~ Defaulter Report together with—

— ~~(a) the record of the proceedings;~~

- ~~(ba)~~ the record of the inspector's service;
- ~~(eb)~~ the Commissioner's recommendation; and
- ~~(dc)~~ ~~his-the~~ Commissioner's reasons for not making an award under regulation 25~~(12) or (23)~~.

(2) The Commissioner ~~shall-must~~ at the same time as ~~he forwards a-report-the~~ Defaulter Report is forwarded under paragraph (1) inform the inspector that his or her case will be considered by the Chief Executive, and the inspector may within 14 days ~~of-from~~ the receipt of ~~such-the~~ information, or within ~~such-any~~ extended period of time ~~as-that~~ the Chief Executive may allow, forward to the Chief Executive a ~~written~~

petition **in writing**, containing ~~such any~~ representations ~~as which~~ may be relevant to enable the Chief Executive to exercise ~~his a~~ discretion under paragraph (3).

(3) Where any report is forwarded to the Chief Executive under this regulation, the Chief Executive may-

- (a) order that the inspector be dismissed without retirement benefits; or
- (b) if in all the circumstances of the case he considers justice so requires, set aside any finding of an appropriate tribunal and order that the inspector be dismissed without retirement benefits if in his opinion such punishment is warranted by any finding which has not been set aside; or
- (ba) if in all the circumstances of the case, he is of the opinion that the misconduct of the inspector is serious enough to warrant the compulsory retirement of the inspector, order that the inspector be compulsorily retired with full retirement benefits or reduced retirement benefits or without retirement benefits; or
- (c) remit the case to the Commissioner and the Commissioner may then award any punishment which he has power to award under regulation 25, but where the Commissioner awards any punishment under this paragraph, regulation 26(2) shall apply as if such punishment had been awarded under regulation 25; or
- (d) if he is of the opinion that the inspector does not deserve to be punished but that the proceedings disclose grounds for requiring the inspector to retire in the public interest, without further proceedings require him to retire in the public interest.

#### **27A. Joint proceedings against inspectors and junior police officers**

(1) Where one or more inspectors and one or more junior police officers are charged with a disciplinary offence or offences arising out of the same facts, the Commissioner or a senior police officer may direct that the defaulters be charged and proceeded against jointly at the same proceedings unless-

- (a) one of the defaulters objects to the appropriate tribunal on the grounds of partiality or bias; or
- (b) one of the defaulters objects to joint proceedings on the grounds of disparity of rank.

(2) Joint proceedings under this regulation shall be dealt with as if they were proceedings against an inspector under Part III.

### **PART IV MISCELLANEOUS PROVISIONS**

#### **28. Power to suspend punishment**

(1) Subject to this regulation, any punishment awarded by an appropriate tribunal may be suspended by that tribunal or by any police officer of higher rank than the officer or officers constituting the tribunal for a period of not less than 6 months nor more than 1 year.

(2) Subject to paragraph (3), where any punishment has been suspended under this regulation the appropriate tribunal or any police officer of higher rank shall at the expiration of the period of suspension review the case or may, at any time during the period of suspension, review the case, taking into consideration such reports on the conduct of the defaulter during the period of suspension as may be available.

(3) ~~The~~ On a review under paragraph (2), the appropriate tribunal or officer of higher rank may—

- (a) remit or reduce the punishment ~~and~~; or
- (b) order the punishment to be executed immediately.

(3A) ~~in such an event shall~~ If the appropriate tribunal or officer of higher rank remits or reduces the punishment, the appropriate tribunal or officer of higher rank must cause any entry relating to the disciplinary offence which has been made in the records of the defaulter to be expunged or altered accordingly. ~~, as the case may be, or order the punishment to be executed forthwith, except that~~

(3B) ~~if~~ If, during the period of suspension of a punishment under this regulation, the defaulter is convicted of ~~a further offence against discipline, being an another disciplinary~~ offence committed after the disciplinary offence for which the suspended punishment was awarded, the suspended punishment ~~shall~~ must be executed ~~forthwith~~ immediately and any punishment on ~~such further~~ that other disciplinary offence ~~shall~~ must not be suspended.

(4) This regulation shall not affect the lodging and hearing of an appeal.

## 29. Payment for loss or damage to property

(1) ~~Where~~ If an inspector or a junior police officer has pleaded guilty to or is found guilty of a disciplinary offence before or by an appropriate tribunal ~~has found an inspector or junior police officer guilty of an offence under regulation 3(2), the appropriate~~ tribunal may, in addition to or in lieu of any punishment ~~he~~ it is by these regulations empowered to award, order the defaulter to pay in full or in part—

- (a) the cost of repairing or replacing any article of clothing, equipment or property ~~whatsoever that has been~~ entrusted or supplied to the defaulter in his ~~or her~~ capacity as a police officer which has been lost or damaged;
- (b) the cost of repairing or replacing any Government property lost or damaged by ~~him~~ the defaulter; or
- (c) the compensation paid, ex gratia or otherwise, by the Government to any person in respect of the loss or damage of that person's property by the defaulter,

~~in each case but may do so~~ only if the loss or damage has resulted from the defaulter's neglect or fault, and the amount ordered to be paid does not exceed his ~~or her~~ salary for

~~one~~ 1 month.

(2) A gazetted officer may require an inspector or junior police officer to pay to the Government in full or in part-

- (a) the cost of repairing or replacing any article of clothing, equipment or property whatsoever entrusted to the inspector or junior police officer in his capacity as police officer and lost or damaged by him;
- (b) the cost of repairing or replacing any Government property lost or damaged by him; or
- (c) the compensation paid, ex gratia or otherwise, by the Government to any person in respect of the loss or damage of that person's property by the inspector or junior police officer,

in each case only if the loss or damage has resulted from the junior police officer's or inspector's neglect or fault and the amount ordered to be paid does not exceed his salary for one month.

(3) For the purposes of enabling due inquiry to be made as to whether any police officer should be required to pay any amount under paragraph (2), affording ~~him~~ **the police officer** due opportunity to make representations and enabling ~~any~~ **a** requirement under that paragraph to be appealed against and reviewed, Parts II and III ~~shall~~ **apply, mutatis mutandis with the necessary modifications**, to and in respect of ~~such a~~ **that** requirement as they apply to and in respect of a finding of guilty of ~~an~~ **a** disciplinary offence ~~under regulation 3(2)~~ and an award of punishment **for the offence**.

#### **29A. Seizure and detention of property required as exhibit**

(1) A police officer of the rank of sergeant or above may seize and detain any property which he reasonably suspects to be the property of a police officer that may be required for the purpose of proving a disciplinary offence.

(2) Any property seized and detained under paragraph (1) and which is not admitted in evidence as an exhibit in disciplinary proceedings shall-

- (a) if the owner thereof is not known, be forfeited and disposed of in accordance with paragraph (3) or (4) as the case may be; and
- (b) if the owner thereof is known, be returned to the owner.

(3) Any property seized and detained under this regulation the ownership of which is not known shall be disposed of in such manner as the Commissioner may determine and, if sold, after the deduction of expenses necessarily incurred in the sale, the proceeds of sale (if any) shall be paid into the general revenue.

(4) Any money seized and detained under this regulation the owner of which is not known shall be paid into the general revenue.

#### **29B. Disposal of exhibits**

(1) An appropriate tribunal may, in addition to any award made in any proceedings, order the forfeiture of any property admitted in evidence as an exhibit.

(2) Property ordered to be forfeited under paragraph (1) shall, after the award

has been confirmed and any appeal determined, be disposed of in such manner as the Commissioner shall determine and, if sold, after the deduction of expenses necessarily incurred in the sale, the proceeds of sale (if any) shall be paid into the general revenue.

(3) Money ordered to be forfeited under paragraph (1) shall, after the award has been confirmed and any appeal determined, be paid into the general revenue

### **30. Awards**

The punishment that may be awarded by an inspector, a superintendent, a senior police officer, the Force Discipline Officer, the Commissioner and the Chief Executive respectively shall be those set out in the Schedule.

### **31. Effect of award**

Subject to regulation 28, an award of punishment made under these regulations shall take effect from the date of announcement or communication to the defaulter of the award

### **32. (Omitted as spent)**

### **33. Transitional and saving provisions**

(1) Subject to paragraph (2), the amendments made by the amendment regulation do not apply to proceedings under these regulations conducted in respect of a defaulter on whom a notice was served before the commencement date under regulation 5(2) or 17(4) or (5) of the pre-amended regulations, and the pre-amended regulations apply in respect of those proceedings as if those amendments had not been made.

(2) Paragraph (1) does not apply to—

(a) the addition of the definitions of “barrister”, “defence representative”, “disciplinary offence”, “hearing” and “solicitor” under section 3 of the amendment regulation; and

(b) the following sections of the amendment regulation—

(i) section 7, which amends regulation 3C (procedure for minor offences) of the pre-amended regulations;

(ii) section 13, which adds regulation 7B (representation of defaulter at hearing) to these regulations;

(iii) section 15, which substitutes regulation 9 (procedure at hearing) of these regulations for regulation 9 of the pre-amended regulations;

(iv) section 21, which adds regulation 12A (proceedings in defaulter’s absence) to these regulations;

(v) section 29, which adds regulation 18C (representation of

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defaulter at hearing) to these regulations;

(vi) section 32, which substitutes regulation 21 (procedure at hearing) of these regulations for regulation 21 of the pre-amended regulations;

(vii) section 38, which adds regulation 24A (proceedings in defaulter's absence) to these regulations; and

(viii) section 43(2), which substitutes regulation 29(3) of these regulations for regulation 29(3) of the pre-amended regulations.

(3) In this regulation—

“amendment regulation” (《修訂規例》) means the Police (Discipline) (Amendment) Regulation 2012 (L.N. [] of 2012);

“commencement date” (生效日期) means the commencement date of the amendment regulation appointed under section 1 of the amendment regulation.

“pre-amended regulations” (《修訂前規例》) means the Police (Discipline) Regulations (Cap. 232 sub. leg. A) as in force immediately before the commencement date.



## SCHEDULE

[reg. 30]

### POWERS OF PUNISHMENT

Appropriate Tribunal or Authority (1)	Punishment that may be imposed upon	
	Junior Police Officers (2)	Inspectors (3)
Inspector (Under Part IA only)	Written admonishment	Not applicable
Superintendent	<ol style="list-style-type: none"> <li>1. (a) Caution; (b) Reprimand; (c) Severe reprimand; or (d) Forfeiture of not more than 7 days' pay except in the case of absence without good cause when forfeiture of pay <del>shall</del> extends to the period of absence in addition to any other punishment awarded.</li> <li>2. Suspend punishment under regulation 28.</li> <li>3. Order for payment under regulation 29.</li> </ol>	<ol style="list-style-type: none"> <li>1. Written admonishment. (Under Part IA only)</li> <li>2. Caution; and in the case of absence without good cause, the forfeiture of pay for the period of absence in addition to any other punishment awarded.</li> <li>3. Suspend punishment under regulation 28.</li> <li>4. Order for payment under regulation 29.</li> </ol>

Appropriate Tribunal or Authority (1)	Punishment that may be imposed upon	
	Junior Police Officers (2)	Inspectors (3)
Senior Police Officer and (in the case of Junior Police Officers only) Force Discipline Officer	<p>1. (a) Caution; (b) Reprimand; (c) Severe reprimand; (ca) Deferment or stoppage of increment; (d) Forfeiture of not more than 1 month's pay except in the case of absence without good cause when forfeiture of pay <del>shall</del> extends to the period of absence in addition to any other punishment awarded; or (e) In the case of a station sergeant or sergeant, reduction in rank.</p> <p>2. Suspend punishment under regulation 28.</p> <p>3. Order for payment under regulation 29</p> <p>4. In place of, or in addition to, any punishment awarded under paragraph 1 above-</p> <p>(a) dismissal without retirement benefits, with, in the case of a station sergeant or sergeant, reduction to the ranks before dismissal;</p> <p>(b) an order to resign <del>forthwith</del> immediately, without salary in lieu of notice; or</p> <p>(c) compulsory retirement with full retirement benefits or reduced retirement benefits or without retirement benefits.</p> <p>(Note: In lieu of punishment retirement in the public interest may be required under regulation 13(3A))</p>	<p>1. (a) Caution; (b) Reprimand; and (c) In the case of absence without good cause, the forfeiture of pay for the period of absence in addition to any other punishment awarded.</p> <p>2. Suspend punishment under regulation 28.</p> <p>3. Order for payment under regulation 29</p>

Appropriate Tribunal or Authority (1)	Punishment that may be imposed upon	
	Junior Police Officers (2)	Inspectors (3)
	by the Force Discipline Officer)	
Commissioner of Police	<p>1. (a) Caution; (b) Reprimand; (c) Severe reprimand; <b>(ca) Deferment or stoppage of increment;</b> (d) Forfeiture of not more than 1 month's pay except in the case of absence without good cause when forfeiture of pay <del>shall</del> extends to the period of absence in addition to any other punishment awarded; or (e) In the case of station sergeant or sergeant, reduction in rank.</p> <p>2. Suspend punishment under regulation 28.</p> <p>3. Order for payment under regulation 29.</p> <p>4. In place of, or in addition to, any punishment awarded under paragraph 1 above-</p> <p>(a) dismissal without retirement benefits, with, in the case of a station sergeant <del>or sergeant</del>, reduction to the ranks before dismissal;</p> <p>(b) an order to resign <del>forthwith</del> <b>immediately</b> without salary in lieu of notice; or</p> <p>(c) compulsory retirement with full retirement benefits or reduced retirement benefits or without retirement benefits.</p>	<p>1. (a) Caution; <del>or</del> (b) Reprimand. <del>;</del> <del>or</del> <b>(c) Severe reprimand.</b></p> <p>2. Suspend punishment under regulation 28.</p> <p>3. Order for payment under regulation 29.</p> <p>4. In place of, or in addition to any punishment awarded under paragraph 1 above-</p> <p>(a) in the case of a chief inspector reduction to the rank of senior inspector or inspector;</p> <p>(b) in the case of a senior inspector, reversion to the rank of inspector; <b>(ba) severe reprimand;</b></p> <p>(c) deferment or stoppage of increment; or</p> <p>(d) forfeiture of not more than 1 month's pay except in the case of absence without good cause, when forfeiture <del>shall</del> extends to the period of absence in addition to any other</p>

Appropriate Tribunal or Authority (1)	Punishment that may be imposed upon	
	Junior Police Officers (2)	Inspectors (3)
	(Note: In lieu of punishment retirement in the public interest may be required under regulation <del>13(3A)</del> 15(2)(e))	punishment awarded.
Chief Executive	Not applicable	<ol style="list-style-type: none"> <li>1. All punishments that may be awarded by the Commissioner.</li> <li>2. Dismissal without retirement benefits</li> <li>3. Compulsory retirement with full retirement benefits or reduced retirement benefits or without retirement benefits.</li> </ol> <p>(Note: In lieu of punishment, retirement in the public interest may be required under regulation 27(3)(d))</p>

**[Mark-up – May 2012]**  
**(Based on L.N. 60 of 2012)**

**PRISON RULES**

(Cap 234, section 25)

**PART V**

**DISCIPLINARY PROVISIONS APPLICABLE TO  
ALL OFFICERS AND OTHER PERSONS EMPLOYED IN PRISONS**

**238A. Interpretation of this Part**

In this Part—

“accused” (被控者) means a Chief Officer, subordinate officer or any other person employed in the prisons who is charged with a disciplinary offence;

“barrister” (大律師) has the meaning given by section 2(1) of the Legal Practitioners Ordinance (Cap. 159);

“defence representative” (辯護代表) means a person specified in rule 245A(1)(a) or (b) who represents an accused at a hearing;

“hearing” (聆訊) means a hearing conducted in respect of a disciplinary offence;

“solicitor” (律師) has the meaning given by section 2(1) of the Legal Practitioners Ordinance (Cap. 159).

(1) OFFENCES AGAINST DISCIPLINE

**239. Offences**

(1) Any officer of the Correctional Services Department or other person employed in the prisons commits a disciplinary offence who-

- (a) without good and sufficient cause fails to carry out any lawful order, whether written or verbal;
- (b) is insubordinate towards any officer in the service of the Correctional Services Department whose orders it is for the time being his duty to obey;
- (c) (i) neglects, or without good and sufficient cause fails to do,

promptly and diligently, anything which it is his duty to do;  
or

- (ii) by carelessness or neglect in the performance of his duty contributes to the occurrence of any loss, damage or injury to any person or property;
- (d) knowingly makes any false, misleading, or inaccurate statement in connection with his duty either verbally, or in any official document or book, or signs any such statement, or with intent to deceive, destroys or mutilates any such document or book, or erases any entry therein;
- (e) *(Repealed)*
- (f) (i) *(Repealed)*
  - (ii) fails to account for, or to make a prompt and true return of, any money or property for which he is responsible whether in connection with his duties as an officer of the Correctional Services Department or other person employed in the prisons or with any club or fund connected with the prison or the staff;
  - (iii) improperly uses his position as an officer of the Correctional Services Department or other person employed in the prisons to his personal advantage;
- (g) without proper authority-
  - (i) carries out any pecuniary or business transaction with or on behalf of any prisoner or ex-prisoner, or with a relative or friend of any prisoner or ex-prisoner;
  - (ii) brings in or carries out, or attempts to bring in or carry out, or knowingly allows to be brought in or carried out, to or for any prisoner any article whatsoever;
  - (iii) solicits or accepts any advantage from any prisoner or ex-prisoner, or from a friend or relative of any prisoner or ex-prisoner;
- (h) (i) without proper authority communicates with any ex-prisoner or with a relative, or friend of any prisoner, or ex-prisoner;
  - (ii) communicates with a prisoner for an improper purpose;
  - (iii) allows any undue familiarity between a prisoner and himself, or any other person employed in the prisons;
  - (iv) discusses his duties, or any matters of discipline or prison arrangement, within the hearing of a prisoner;
- (i) deliberately acts in a manner calculated to provoke a prisoner;

- 
- (j) without necessity uses force in dealing with the prisoners, or where the use of force is necessary, uses undue force;
  - (k) without proper authority or reasonable excuse-
    - (i) absents himself from the prison, or from any parade, or place of duty;
    - (ii) arrives late for any duty or parade;
  - (l) (i) wilfully or negligently damages or loses any article of clothing, or personal equipment with which he has been provided, or entrusted, or fails to take proper care thereof;
  - (ii) neglects to report any damage to, or loss of, any article of clothing, or personal equipment, however caused;
  - (m) when on duty, or called upon for duty, is unfit for duty by reason of alcoholic drink or of drugs taken otherwise than under medical direction;
  - (n) (i) while on or off duty acts in a disorderly manner, or in any manner prejudicial to discipline, or likely to bring discredit on the service;
  - (ii) smokes, or drinks intoxicating liquor either within the prison walls (except under such restrictions as to time and place as may be prescribed), or while on duty in a court of law, or when in charge of prisoners outside the prison;
  - (o) borrows money from an officer subordinate or junior in rank, or lends money to his superior officer, or stands surety for a brother officer in raising a loan;
  - (p) contravenes any of these rules or commits any breach of duty;
  - (q) is guilty of anything, whether by reason of contravention of government regulations or otherwise, which amounts to misconduct in a public officer;
  - (r) having been interdicted under the Ordinance, does not immediately give up his keys and accoutrements.
- (2) In this rule "advantage" (利益) means-
- (a) any gift, loan, fee, reward or commission consisting of money or of any valuable security or of other property or interest in property of any description;
  - (b) any office, employment or contract;
  - (c) any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;
  - (d) any other service, or favour (other than entertainment), including protection from any penalty or disability incurred or apprehended

or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted;

- (e) the exercise or forbearance from the exercise of any right or any power or duty; and
- (f) any offer, undertaking or promise, whether conditional or unconditional, of any advantage within the meaning of any of the preceding ~~sub~~paragraphs (a), (b), (c), (d) and (e).

(2) *(Repealed)*

**240-242. *(Repealed)***

(3) RULES OF PROCEDURE AND DISCIPLINARY AWARDS

**243. Procedure as to charges**

(1) A charge against ~~any Chief Officer or subordinate officer or other person employed in the prisons in respect of any disciplinary offence enumerated in rule 239 shall an accused must~~ be entered on a charge sheet as soon as practicable after consideration by an officer, not being below the rank of Chief Officer, of the report upon which the charge is based.

(2) The disciplinary offence alleged ~~shall must~~ be specifically stated in the charge sheet which ~~shall must~~ also contain ~~such the~~ particulars ~~as shall that~~ leave ~~such officer or person the accused~~ under no misapprehension as to the charge ~~against him~~.

- (3) (a) The charge sheet together with a list of witnesses whom it is proposed to call and any written statements which it is proposed to adduce in support of the charge ~~shall be handed to such officer or person must be served on the accused~~ at the earliest possible moment.

(b) ~~The written statements (if any) shall be signed by the officer or person making them, and the officer or person charged shall, after perusal, also sign them to indicate that he has seen them, and return them as soon as is practicable. (Repealed)~~

- (c) ~~The officer or person charged shall~~ The accused must be allowed a reasonable opportunity to make copies of all documents for the purposes of ~~his the~~ defence, and ~~shall must~~, if ~~he the accused~~ so requests, be given copies of them.



**243A. Appointment of prosecutor**

The Commissioner must appoint a prosecutor for the purposes of the proceedings against an accused under this Part.

**244. Duty to make reply**

(1) The ~~officer or person charged shall~~ accused must, as soon as possible, and in any case not later than 24 hours after ~~the receipt by him~~ of the charge sheet,—

- (a) state in writing ~~upon~~ the charge sheet his ~~or her~~ reply to the charge ~~and~~;
- (b) ~~shall give~~ set out on a list the names of ~~any witness he desires~~ the witnesses the accused wishes to call; and
- (c) ~~shall~~ return the charge sheet to ~~the Chief Officer who shall forthwith~~ a senior officer specified for the purpose of this rule on the charge sheet.

(2) The senior officer must transmit the charge sheet, ~~together with the~~ lists of witnesses and ~~the all~~ written statements ~~(if any), to the Superintendent prosecutor.~~

**245. Power of Superintendent to hear charges**

(1) ~~Where~~ Paragraph (2) or (3) applies if on consideration of the report ~~upon~~ on which the charge is based and the written statements (if any), the Superintendent considers that the charge is within his ~~or her~~ competence, and that, if it is admitted or found proved, ~~his~~ the Superintendent's powers of punishment ~~will be~~ sufficient, ~~then subject to the provisions of paragraph (2).~~

(a2) ~~if the officer or person charged~~ If the accused admits the charge, the Superintendent ~~shall~~ must, after hearing—

- (a) ~~him and the accused or the~~ defence representative;
- (b) any witness ~~he may wish to call in~~ called by the accused for the purpose of extenuation or explanation; and—
- (c) any other witnesses whom the Superintendent ~~or~~ the prosecutor may consider desirable to call,

either caution ~~such officer or person~~ the accused, or make a disciplinary award within ~~his~~ the Superintendent's powers;

(b3) ~~if the officer or person charged~~ If the accused denies the charge, the Superintendent ~~shall~~ must, at the earliest possible moment, arrange for the attendance of all necessary witnesses and ~~shall~~ must, after hearing—

- (a) all the evidence; and—
- (b) ~~the any~~ explanation ~~of such officer or person~~ given by the accused

or the defence representative,

either dismiss the charge or, if ~~he-the~~ Superintendent finds the charge proved, administer a caution or make a disciplinary award within ~~his-the~~ Superintendent's powers.

(24) ~~Where-If~~ the Superintendent, after hearing all of the evidence on a charge ~~under paragraph (1)~~, comes to the conclusion that the charge is proved but that the case should be referred to the Commissioner, ~~he-shall-the~~ Superintendent must so refer the case and ~~shall forthwith immediately~~ inform the ~~officer or person charged-accused~~ accordingly.

(2A5) ~~Where-the officer or person charged-If~~ the accused is informed by the Superintendent ~~under paragraph (2)~~ that the case has been referred to the Commissioner ~~under paragraph (4)~~, ~~he-the~~ accused may, within 14 days ~~of-after~~ being so informed or within ~~such-any~~ further period ~~as-that~~ the Commissioner may allow, make representations in writing to the Commissioner.

(36) ~~Where-If~~ on consideration of the report on which the charge is based and the written statements (if any), the Superintendent considers that the charge is not within his ~~or her~~ competence or that, although it is within his ~~or her~~ competence, his ~~or her~~ powers of punishment would be insufficient if the charge were admitted or found proved, ~~he-shall-the~~ Superintendent must refer the case to the Commissioner and ~~shall-must~~ so inform the ~~officer or person charged-accused;and~~.

(7) ~~the-The~~ Commissioner may either deal with the case ~~himself-in person~~ or direct the Deputy Commissioner to hear the charge and ~~shall-must~~ so inform the ~~officer or person charged-accordingly~~ accused.

#### 245A. Representation of accused at hearing

(1) An accused may be represented at a hearing by—

(a) (subject to the Commissioner's approval) a barrister or solicitor;  
or

(b) any other person of the accused's choice who is approved by the Commissioner for the purpose,

and the person specified in subparagraph (a) or (b) may conduct the defence on the accused's behalf.

(2) If the Commissioner gives approval under paragraph (1)(a), the accused may be represented at the hearing by a barrister or solicitor of the accused's choice.

(3) Despite paragraph (1), the accused must attend the hearing in person.

(4) If the accused is represented at the hearing by a barrister or solicitor, the person hearing the charge and the prosecutor may separately be assisted by a barrister or solicitor at the hearing.

**246. ~~Rights of officer or person charged~~ Procedure at hearing**

~~Where the Commissioner, Deputy Commissioner or Superintendent, as the case may be, hears a charge against any officer or other person employed in the prisons—~~

~~(a) such officer or person shall be allowed to hear all of the evidence against him, to cross-examine any witness giving such evidence and to examine any witness called in his defence;~~

~~(b) the Commissioner, Deputy Commissioner or Superintendent shall take or cause to be taken notes of every statement made in evidence, whether under examination or cross-examination, and of any statement made before him by the officer or person charged, and shall invite the person by whom any such statement was made to sign the notes taken thereof.~~

(1) An accused and the defence representative must be allowed to hear all of the evidence adduced at a hearing.

(2) The prosecutor or any barrister or solicitor assisting the prosecutor may examine and re-examine any witness giving evidence against the accused, and may cross-examine any witness called by the accused.

(3) The accused or the defence representative may cross-examine any witness giving evidence against the accused, and may examine and re-examine any witness called by the accused.

(4) The person hearing a charge may—

(a) call witnesses; and

(b) ask any witness any question,

that the person considers may assist him or her in determining the case.

**246A. Proceedings in accused's absence**

Where an accused is required to appear in person in any proceedings under this Part and repeatedly fails to appear, the person hearing the charge may proceed in the absence of the accused if satisfied that the accused has no reasonable excuse for the failures.

**246B. Record of proceedings**

(1) The person hearing a charge must make, or cause to be made, a written record of the proceedings of a hearing.

(2) The person hearing a charge may make, or cause to be made, an audio recording or audio and visual recording of the proceedings, or any part of the proceedings, of a hearing.

**247. Power of Superintendent to make disciplinary awards**

The Superintendent may make any of the following disciplinary awards-

- (a) (i) administer a fine of an amount not exceeding 1 day's pay, which may or may not be accompanied by a reprimand, or a severe reprimand; or
- (ii) without administering a fine, award a reprimand, or a severe reprimand; or
- (b) award extra duty for a period not exceeding 12 hours provided that such extra duty shall not exceed 6 hours in one working week.

**248. Power of Deputy Commissioner to make disciplinary awards**

~~Where-If~~ the Deputy Commissioner hears any charge which has been referred to him ~~or her~~ by the Commissioner under rule 245(37), ~~he shall~~ the Deputy Commissioner must, after hearing all of the evidence and the explanation, if any, of the ~~officer or person charged~~ accused, either dismiss the charge or, if ~~he finds~~ the charge is found proved, ~~he shall~~—

- (a) administer a caution; or
- (b) award any one or more of the following punishments—
  - (i) reduction in rank;
  - (ii) stoppage or deferment of increment;
  - (iii) ~~where-if~~ the charge is an offence against rule 239(1)(k)(i), forfeiture of pay (excluding allowances) for a period not exceeding ~~one-1~~ month or the period of absence, whichever is ~~the~~ greater;
  - (iv) a fine not exceeding ~~one-1~~ month's salary (excluding allowances);
  - (v) severe reprimand;
  - (vi) reprimand; ~~or~~
  - (vii) extra duties.

**249. Powers of Commissioner on considering a referred case or on hearing of charge**

The Commissioner ~~shall~~ must, on consideration of a case referred to him ~~or her~~ under rule 245(24) or, ~~where he deals with on hearing~~ a case ~~referred to him~~ under rule 245(37)—

- (a) if in ~~his-the~~ Commissioner's opinion the evidence does not show that a disciplinary offence has been committed, dismiss the

charge;

- (b) if in ~~his~~ the Commissioner's opinion the evidence does show that a disciplinary offence has been committed, either—
  - (i) award a punishment within ~~his~~ the Commissioner's powers; or
  - (ii) refer the case to the Chief Executive.—

## 250. Reference of case to Chief Executive

(1) ~~Whenever~~ If the Commissioner refers a case to the Chief Executive ~~under rule 249(b)(ii) he shall~~, the Commissioner must forward to the Chief Executive—

- (a) a copy of the charge sheet;
- (b) a copy of the written record of ~~the~~ proceedings ~~(including the charge)~~ made in respect of the case under rule 246B(1) certified by ~~himself~~ the Commissioner to be a true copy of the original thereof;
- ~~(bc)~~ the accused's record of service ~~of the officer or person charged;~~ and
- ~~(ed)~~ a report setting out—
  - (i) ~~his~~ the Commissioner's reasons for considering the charge proved; and
  - (ii) ~~his~~ the Commissioner's recommendation with respect to punishment or otherwise.

(2) ~~Whenever the Commissioner so refers a case he shall notify the officer or person concerned that he has done so and~~ The Commissioner must inform the accused of the reference.

(3) ~~that the officer or person~~ The accused may make representations in writing to the Chief Executive within 14 days ~~of such notice or such~~ after being informed of the reference under paragraph (2) or any further period ~~as that~~ the Chief Executive may allow.

## 251. Procedure when case referred to Chief Executive

~~Upon~~ On reference to ~~him~~ the Chief Executive of a case and after consideration of any representations made by the ~~officer or person concerned~~, the Chief Executive ~~may~~ must—

- (a) if ~~he is~~ in the Chief Executive's opinion ~~that~~ the charge has not been proved, either—
  - (i) dismiss ~~it~~ the charge; or

- (ii) order ~~either a~~ further investigation by the Commissioner, or a fresh investigation in ~~such a~~ manner and by ~~such a~~ person or persons ~~as he that the Chief Executive~~ thinks fit;
- (b) if ~~he is of in the Chief Executive's~~ opinion ~~that~~ the charge is proved, or if, after any further or fresh investigation ordered under paragraph (a)(ii), ~~he the Chief Executive~~ is of ~~such that~~ opinion, award a punishment within ~~his the Chief Executive's~~ powers.

## 252. Punishment awarded to be entered in record of service

Every punishment awarded shall be entered in the service record of the officer or person so punished.

## 253. Procedure where Commissioner has delegated his powers

(1) ~~Where, pursuant to~~ If the Commissioner has authorized under section 24(2) of the Ordinance, another person to exercise or perform the Commissioner's ~~has delegated the~~ powers and, functions or duties ~~conferred or imposed on him by this part to another officer, references in rules under rules~~ 249, 250 and 251—

- (a) a reference in those rules to the Commissioner is to ~~the Commissioner, shall be read regarded as if they were a~~ references to that other ~~officer~~ person; and
- (b) a reference in those rules to the Chief Executive, ~~shall is to be read regarded as if they were a~~ references to the Commissioner, ~~but~~

(2) ~~any~~ A case referred to the Commissioner by another ~~officer pursuant to person under rule 249(b)(ii) (as modified by this rule paragraph (1))~~ may be referred to the Chief Executive by the Commissioner in accordance with rules ~~250 and 251~~.

## 254. Punishment of officers (other than Assistant Officers) and other persons

A Chief Officer, subordinate officer (other than an Assistant Officer) or other person employed in the prisons who is found guilty of or pleads guilty to a disciplinary offence may be punished by the award of any one or more of the following punishments-

- (a) by the Commissioner-
  - (i) reduction in rank;
  - (ii) stoppage or deferment of increment;

- 
- (iii) where the offence is against rule 239(k)(i), forfeiture of pay (excluding allowances) for a period not exceeding one month or the period of absence, whichever is the greater;
  - (iv) a fine not exceeding one month's salary (excluding allowances);
  - (v) severe reprimand;
  - (vi) reprimand;
  - (vii) extra duties;
  - (b) by the Chief Executive-
    - (i) the punishments described in paragraph (a);
    - (ii) dismissal without retirement benefits;
    - (iii) compulsory retirement with full retirement benefits or reduced retirement benefits or without retirement benefits.

## **255. Punishment of Assistant Officers**

An Assistant Officer who is found guilty of or pleads guilty to a disciplinary offence may be punished by the Commissioner or the Chief Executive by the award of any one or more of the punishments referred to in rule 254(b).

### **255AA. Alternative punishment of Assistant Officer absent without leave**

Without prejudice to any other disciplinary provisions applicable to him under these rules, where an Assistant Officer is absent from duty without leave for a period exceeding 21 days and it is reported to the Chief Executive by the Commissioner that-

- (a) such officer cannot be traced; or
- (b) on being required by the Commissioner by notice in writing (sent to any address through which it may reasonably be expected to reach him) to give, within the period specified in the notice, an excuse for his absence, the officer has failed to give any excuse or to give an excuse that is acceptable to the Commissioner,

the Chief Executive may without further proceedings summarily dismiss the officer

### **255A. Order for payment for damage, etc. to equipment, etc.**

A punishment awarded under rule 254 or 255 may include an order for the payment by the officer or person punished of the cost of replacing or repairing any article of clothing, equipment or other property lost or damaged by him and with which he has been provided or entrusted by the Government.

**255B. Punishment where criminal offence is committed**

(1) The punishment of a Chief Officer, subordinate officer or other person employed in the prisons who in criminal proceedings is found guilty of or pleads guilty to a criminal offence shall be in accordance with this rule.

(2) In the case of an officer (other than an Assistant Officer) or other person employed in the prisons, the Commissioner shall as soon as practicable-

- (a) refer the case to the Chief Executive; and
- (b) notify the officer or person that he has done so and that the officer or person may make representations in writing to the Chief Executive in mitigation of punishment within 14 days of receiving such notice or within such further period as the Chief Executive may allow.

(3) In referring a case under paragraph (2) the Commissioner shall send to the Chief Executive-

- (a) a copy of the record of the criminal proceedings;
- (b) the record of service of the officer or person concerned; and
- (c) his recommendation with respect to punishment or otherwise.

(4) The Chief Executive may, after considering any representations made by the officer or person, award any one or more of the punishments he may award under rule 254(b) in respect of a disciplinary offence by an officer (other than an Assistant Officer) or other person employed in the prisons.

(5) In the case of an Assistant Officer, the Commissioner shall notify the officer that he may make representations in writing in mitigation of punishment within 14 days of receiving such notice and, after considering any such representations, may award any one or more of the punishments he may award under rule 255 in respect of a disciplinary offence by an Assistant Officer.

(6) In paragraph (1) "criminal proceedings" and "criminal offence" include respectively-

- (a) criminal proceedings in; and
- (b) a criminal offence against the law of,  
any place outside Hong Kong.

**(4) REVIEWS AND APPEALS****255C. Review**

(1) Where a Chief Officer, subordinate officer or other person employed in the prisons has been found guilty of a disciplinary offence or has been



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punished under these rules by the Commissioner or another officer, the Commissioner may, of his own motion, within 14 days of the finding or the punishment (if it was awarded on a later day), review the finding or punishment or both, and within 14 days of the punishment he may review any punishment awarded following a plea of guilty to a disciplinary offence.

(2) Upon a review under this rule the Commissioner may exercise the powers in rule 255H(a) and (b) and, subject to rule 255J, may do any of the things described in rule 255F(a), (b), (c) or (d).

#### **255D. Appeals**

A Chief Officer, subordinate officer or other person employed in the prisons (including one who has been dismissed) may appeal, in accordance with the following rules, against-

- (a) a finding by the Commissioner or other officer that he is guilty of a disciplinary offence;
- (b) any punishment awarded by the Commissioner or other officer, other than under rule 255F

#### **255E. To whom appeal lies**

(1) The appeal shall lie-

- (a) to the Chief Executive, in respect of a finding made or a punishment awarded by the Commissioner; and
- (b) to the Commissioner in any other case.

(2) The Chief Executive may delegate to the Secretary for the Civil Service, or to a public officer not below the rank of Director of Bureau, the determination of an appeal referred to in paragraph (1)(a).

#### **255F. Powers of the Chief Executive and Commissioner on appeal**

Upon an appeal, the Chief Executive or the Commissioner, as the case may be, may-

- (a) confirm or reverse the finding;
- (b) confirm the punishment;
- (c) subject to rule 255J, substitute any other punishment which could have been awarded in the first instance;
- (d) remit the punishment in full or in part without substituting any other punishment;
- (e) if he dismisses an appeal against a finding and no punishment has been awarded, treat the appeal as if it were a case referred to

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him for punishment and award any punishment or take any other action within his powers.

**255G. Appeal to be made within 14 days**

An appeal shall be made in writing within 14 days from the day on which the officer or person is informed that he has been found guilty of a disciplinary offence or from the day on which any punishment is awarded.

**255H. Further evidence may be admitted**

For the purpose of any appeal against a finding, the Chief Executive may-

- (a) accept in whole or in part the record of the evidence already taken;
- (b) direct that the whole or any part of the evidence be taken again or that additional evidence be taken,

and the Commissioner may, where the appeal lies to him, do any of those things and may also himself take the evidence or part thereof again or take the additional evidence.

**255I. Suspension of punishment pending appeal**

In the event of an appeal, any punishment (other than a severe reprimand or reprimand) awarded an officer or person shall be suspended until the appeal is disposed of or abandoned or withdrawn,

**255J. Greater punishment not to be imposed without opportunity of hearing**

Neither the Chief Executive nor the Commissioner shall award a greater punishment under rule 255C(2) or 255F without first allowing the officer or person a reasonable opportunity to be heard or to make representations in writing as to why the punishment should not be increased.

**255K. Power of Chief Executive to require retirement in lieu of punishment**

Notwithstanding anything in these rules, where the Chief Executive is of the opinion that any officer or other person employed in the prisons who has been found guilty of or who has pleaded guilty to a disciplinary offence does not deserve to be punished but the proceedings have disclosed grounds for requiring him to retire in the public interest, the Chief Executive may without further proceedings require him to retire in the public interest.

[*Mark-up – May 2012*]  
(Based on L.N. 61 of 2012)

## GOVERNMENT FLYING SERVICE (DISCIPLINE) REGULATION

(Cap 322, section 13)

### PART I PRELIMINARY

1. (*Omitted as spent*)

2. **Interpretation**

In this Regulation, unless the context otherwise requires-

“barrister” (大律師) has the meaning given by section 2(1) of the Legal Practitioners Ordinance (Cap. 159);

“criminal offence” (刑事罪行) includes a criminal offence against the law of a place outside Hong Kong;

“criminal proceedings” (刑事程序) includes criminal proceedings in a place outside Hong Kong;

“defence representative” (辯護代表) means a person specified in section 9(1)(a), (b) or (c) who represents a member charged with a disciplinary offence at a hearing;

“hearing” (聆訊) means a hearing conducted in respect of a disciplinary offence;

“official record of proceedings” (程序正式紀錄) means a written record of the proceedings of a hearing made under section 11A(1);

“prosecutor” (檢控員) means the member appointed to prosecute a charge under this Regulation;

“solicitor” (律師) has the meaning given by section 2(1) of the Legal Practitioners Ordinance (Cap. 159);

“superior officer” (上級人員) includes a member of the same rank as, or lower rank than, a member but who has authority to give the member orders.

### **3. Saving of Public Service (Administration) Order, etc. on interdiction, etc.**

(1) If a Senior Officer is alleged to have committed a disciplinary offence or a criminal offence or the conduct of a Senior Officer is being investigated in circumstances that a disciplinary offence or a criminal offence may have been committed, the interdiction and payment of emoluments provisions of the Public Service (Administration) Order and government regulations apply to the Senior Officer and the matter shall be dealt with under that Order and those regulations for allegations of misconduct against a public officer.

(2) If an Officer is alleged to have committed a disciplinary offence or a criminal offence or the conduct of an Officer is being investigated in circumstances that a disciplinary offence or a criminal offence may have been committed-

- (a) the Controller may interdict him from duty on full emoluments;
- (b) the matter shall be dealt with under this Regulation.

(3) If an Officer is charged with a disciplinary offence or a criminal offence, the Controller may interdict him from duty on a proportion of the emoluments to which he would otherwise be entitled being not less than one-half.

(4) If an Officer is not punished as a result of disciplinary proceedings and he has been interdicted on less than his full emoluments, he shall be paid the amount withheld on the disciplinary tribunal making its finding.

(5) If an Officer is punished other than by dismissal as a result of disciplinary proceedings and he has been interdicted on less than his full emoluments, he shall be paid such proportion of the amount withheld as the Secretary directs, or where the Controller imposes a penalty, as the Controller directs.

(6) If an Officer is found guilty of or pleads guilty to a criminal offence which is in the opinion of the Controller serious enough to warrant the dismissal of the Officer, the Officer shall not be paid any emoluments from the time he is found or pleads guilty until his case is determined under section 5.

~~(7) An Officer who is interdicted may not leave Hong Kong without the permission of the Controller. (Repealed)~~

(8) Nothing in this Regulation shall preclude-

- (a) the summary dismissal of a member under the Public Service (Administration) Order and government regulations;
- (b) the termination of the employment of a member under the Public Service (Administration) Order and government regulations on the grounds that, having regard to the

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conditions of the public service, the usefulness of the member and the circumstances of the case, termination is desirable in the public interest.

## PART II

### DISCIPLINARY OFFENCES

#### **4. Disciplinary offences**

A member commits a disciplinary offence who-

- (a) is absent from duty without leave or good cause;
- (b) neglects the prompt and diligent performance of his duty;
- (c) neglects to obey a lawful order of a superior officer;
- (d) refuses to obey a lawful order of a superior officer;
- (e) is unfit for duty by reason of alcoholic drink;
- (f) is unfit for duty by reason of drugs taken otherwise than under medical attention;
- (g) with intent to deceive, destroys, mutilates, falsifies or conceals a document connected with the Government Flying Service or his duty;
- (h) with intent to deceive, makes a statement in the course of duty which is false in a material particular;
- (i) wilfully or negligently damages or destroys or negligently loses any Government or other property with which he has been provided or entrusted;
- (j) by his conduct, brings the public service into disrepute;
- (k) by his conduct, prejudices the good order and discipline of the Government Flying Service.

#### **5. Disciplinary action on conviction for criminal offence**

(1) If a member is found guilty of or pleads guilty to a criminal offence and any appeal or other review is dismissed, abandoned, withdrawn or out of time, the member may be punished-

- (a) for a Senior Officer, under the Public Service (Administration) Order and government regulations;
- (b) for an Officer, by the Controller or the Secretary but only after the Controller has notified the Officer of his intention to appoint a Senior Officer to review the criminal proceedings

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with a view to making a recommendation as to punishment under section 17 and inviting the Officer to make representations in writing to the Controller in writing in mitigation of punishment within 14 days of receipt of the notice under this paragraph.

(2) The Controller shall appoint a Senior Officer to review criminal proceedings under subsection (1)(b) where he is of the opinion that the nature and seriousness of the proceedings are such as to warrant investigation from a disciplinary point of view.

(3) The Controller or the Secretary may, after considering a copy of the record of proceedings for the criminal offence, the Officer's record of service and the recommendation of the Senior Officer appointed under subsection (2) to review the matter, impose a punishment under section 17

### PART III PROCEDURE

#### **6. Preliminary procedure**

If the Controller believes that a member may have committed a disciplinary offence, he shall inform the member of the circumstances giving rise to his belief and invite the member to submit an explanation in writing within a specified period not exceeding 7 days.

#### **7. Admonishment procedure if offence admitted**

If a member admits a disciplinary offence, the Controller may admonish the member in writing instead of preferring a charge if the Controller considers admonishment a sufficient penalty.

#### **8. Charging and plea**

(1) If, after the expiration of the period of 7 days referred to in section 6, the Controller considers that on the face of the evidence the member has committed a disciplinary offence, the Controller shall, unless he has admonished the member-

- (a) prefer against the member such charge or charges, relevant to the circumstances, as he thinks fit; and
- (b) appoint a Senior Officer to hear and determine the proceedings.

(2) The Controller shall issue a charge in writing and the Senior Officer shall serve it on the member together with a notice-

- (a) naming the Senior Officer who will hear and determine the proceedings;
- (b) stating the place and time at which the Senior Officer will deal with the charge, being a time not earlier than 7 days from the date of service of the notice;
- (c) requiring the member, in respect of each charge, to notify the Senior Officer appointed to hear the charge, in writing within 5 days of service of the charge, whether he pleads guilty or not guilty; and
- (d) advising him that if he pleads guilty he may make submissions in writing in mitigation of punishment.

#### **8A. Appointment of disciplinary tribunal and prosecutor**

(1) The Senior Officer appointed under section 8(1)(b) to hear and determine a charge constitutes the disciplinary tribunal for the charge.

(2) The Controller must appoint for the purposes of the proceedings under this Regulation against a member charged a prosecutor who is a member not below the rank of the member charged.

#### **9. Representation of member charged with disciplinary offence at hearing**

(1) ~~The Controller shall appoint a member not below the rank of the member charged as a prosecutor and the member charged shall have the right to~~ A member charged with a disciplinary offence may be represented at a hearing by —

(a) a member of ~~his~~ the choice of the member charged, other than the Controller, ~~or~~ a member who may be involved in the proceedings under this Regulation to which the charge relates or a member who is a barrister or solicitor; ~~to conduct his defence on his behalf.~~

(b) (subject to the Controller's approval) a barrister or solicitor; or

(c) any other person of the choice of the member charged who is approved by the Controller for the purpose,

and the person specified in paragraph (a), (b) or (c) may conduct the defence on behalf of the member charged.

~~(2) — Counsel or a solicitor shall not represent the member charged.~~

(2) If the Controller gives approval under subsection (1)(b), the member charged may be represented at the hearing by a barrister or solicitor of the member's choice.

(3) Despite subsection (1), the member charged must attend the hearing in person.

(4) If the member charged is represented at the hearing by a barrister or solicitor, the disciplinary tribunal and the prosecutor may separately be assisted by a barrister or solicitor at the hearing.

## 10. Documents to be supplied to accused

A member charged with a disciplinary offence shall, as soon as possible, be supplied with copies-

- (a) of his written statements made under section 6;
- (b) of the report, allegation or complaint on which the charge is founded (or so much of it as relates to him) and of any report on the charge even if any of them may be confidential; and
- (c) of any witness statement relating to the charge, and the witness's name and address.

## 11. Procedure at hearing

~~(1) The Senior Officer appointed by the Controller to hear and determine a charge shall constitute the disciplinary tribunal.~~

(21) ~~The~~A member charged ~~shall with a disciplinary offence must attend before the disciplinary tribunal~~ at the place of hearing at the time of which notice has been given.

(32) The disciplinary tribunal ~~shall must~~ read the charge to the member charged, who may ~~then~~ change his or her plea, if he or she so wishes.

(43) If the member charged pleads guilty, the disciplinary tribunal ~~shall must~~ enter the plea on the official record of proceedings and ask if the member ~~if he~~ wishes to make ~~a any~~ statement.

(54) The member charged may then—

- (a) make a statement, which ~~shall must~~ be recorded, ~~or may on the official record of proceedings; or~~
- (b) hand in a statement of matters which ~~he desires the member wishes~~ to be taken into consideration by the disciplinary tribunal.

(65) If ~~a the~~ member charged ~~has pleaded pleads~~ not guilty ~~to a charge,~~ the prosecutor or ~~any barrister or solicitor assisting the prosecutor~~ may make an address setting out generally the facts of the case and may call witnesses in support of the charge, and those witnesses may be cross-examined and re-examined.

~~(7) On the conclusion of the evidence of each witness the member~~



~~charged, or the member defending him, may cross-examine the witness and the prosecutor may re-examine the witness.~~

(86) The disciplinary tribunal may take the evidence of a witness by reference to a written statement made by ~~him the witness~~, which the witness may amend or add to, and be cross-examined on, at the hearing.

(97) When the prosecutor or **any barrister or solicitor assisting the prosecutor** has examined all witnesses in support of the charge, the member charged, ~~or the member defending him,~~ **defence representative** may address the disciplinary tribunal only for the purpose of showing that ~~the prosecutor has not established a no~~ prima facie case ~~has been established~~.

(108) If it appears to the disciplinary tribunal ~~considers that the prosecutor has established there is~~ a prima facie case, ~~the disciplinary tribunal shall it~~ must ask if the member charged ~~whether he~~ wishes to give evidence, and ~~whether he wishes to~~ call witnesses.

(119) If the member charged, ~~or any witness on his behalf,~~ gives evidence, the ~~prosecutor member may be~~ cross-examined ~~him and his witnesses and the member and his witnesses may be~~ re-examined and any witness called by the member may be examined, cross-examined and re-examined.

(1210) At the conclusion of all the evidence, the prosecutor or **any barrister or solicitor assisting the prosecutor** may address the disciplinary tribunal and then the member charged, ~~or the member defending him,~~ **defence representative** may make an address in reply.

~~(13) The member charged, the member defending him and the prosecutor shall be entitled to inspect any exhibit produced by a witness.~~

~~(1411) The disciplinary tribunal shall be entitled to~~ may ask ~~such questions of any witness any question as that~~ it considers will assist in determining the issues raised ~~and~~.

~~(12) The disciplinary tribunal may call such witnesses at any time as call any witness whom it considers may be able to assist in the determination of determining the issues raised.~~

~~(13) Evidence must not be taken on oath or affirmation.~~

(14) The member charged, the **defence representative**, the prosecutor and **any barrister or solicitor assisting the prosecutor** may inspect any exhibit produced to the disciplinary tribunal by a witness.

(15) The disciplinary tribunal may adjourn ~~the hearing of the case~~ from time to time as it considers necessary for the proper determination of the proceedings.

~~(16) The disciplinary tribunal shall take, or cause a person to take, a record of the proceedings at the hearing of the case.~~

~~(17) If the member charged wishes to appeal under section 21, he may request a copy of the record and the disciplinary tribunal shall transcribe the~~

~~record and supply a copy to the member.~~

~~(18) The disciplinary tribunal shall not take evidence on oath.~~

#### **11A. Record of proceedings**

(1) The disciplinary tribunal must make, or cause to be made, a written record of the proceedings of a hearing.

(2) The disciplinary tribunal may make, or cause to be made, an audio recording or audio and visual recording of the proceedings, or any part of the proceedings, of a hearing.

(3) If a member charged with a disciplinary offence wishes to appeal under section 21, the member may make a request to the disciplinary tribunal for a copy of the official record of proceedings.

(4) On a request made under subsection (3), the disciplinary tribunal must supply the member charged with a copy of the official record of proceedings.

#### **12. Adding or amending charges**

(1) The prosecutor may amend a charge or add a further charge at any time prior to the disciplinary tribunal communicating a finding to the member charged.

(2) The disciplinary tribunal ~~shall~~**must** read and explain the amended or new charge to the member charged, ~~and he shall who must~~ be called upon to plead to the amended or new charge **in person**, and ~~shall be is~~ entitled to a reasonable adjournment to prepare ~~his a~~ further defence.

(3) Section 11 ~~shall apply to applies in respect of~~ the amended or new charge ~~with such modifications as are necessary~~.

#### **12A. Proceedings in the absence of member charged**

Where a member charged with a disciplinary offence is required to appear in person in any proceedings under this Regulation and repeatedly fails to appear, the disciplinary tribunal may proceed in the absence of the member if satisfied that the member has no reasonable excuse for the failures.

### **PART IV PUNISHMENT**

#### **13. Proceedings after hearing of charge**

At the conclusion of the hearing of a charge including any adjourned

period as the disciplinary tribunal may require to consider the evidence, the disciplinary tribunal shall-

- (a) if in its opinion the evidence does not show that a disciplinary offence has been committed, dismiss it;
- (b) if in its opinion the evidence does show that a disciplinary offence has been committed, refer the case to the Secretary or to the Controller as the case may require.

#### 14. Reference of case to Secretary or Controller

(1) ~~Wherever-If~~ a disciplinary tribunal refers a case to the Secretary or the Controller under section 13(b), it ~~shall-must~~ forward ~~to the Secretary or the Controller—~~

- (a) a copy of the ~~official~~ record of ~~the~~ proceedings (including the charge) certified by itself to be a true copy of the original;
- (b) the ~~member's~~ record of service ~~of the member charged; and~~
- (c) a report setting out—
  - (i) its reasons for considering the charge proved; and
  - (ii) its recommendation with respect to punishment or otherwise.

(2) ~~When the-The~~ disciplinary tribunal ~~so-refers-a-case, it shall notify must inform~~ the member ~~charged of the reference by serving on the member a notice in writing that it has done so and that.~~

(3) ~~the-The~~ member ~~charged~~ may make representations in writing to the Secretary or the Controller ~~in mitigation of punishment~~ within 14 days ~~from the service of such-the~~ notice ~~under subsection (2) or such-any~~ further period ~~as that~~ the Secretary or the Controller may allow.

#### 15. Procedure when case referred to Secretary or Controller

Upon reference to him of a case and after consideration of any representations made by the member, the Secretary or the Controller may-

- (a) if he is of the opinion that the charge has not been proved, either-
  - (i) dismiss it; or
  - (ii) order further investigation or a fresh investigation in such manner and by such person or persons as he thinks fit;
- (b) if he is of the opinion that the charge is proved, or if, after any further or fresh investigation ordered under paragraph (a), he is of such opinion, impose a punishment within his powers

**16. Punishment imposed to be entered in record of service**

(1) The Controller shall enter in the member's record of service of every punishment imposed against him.

(2) The Controller shall remove an entry of an admonishment from a member's record of service one year after the admonishment was given unless during the year he was punished for another offence.

**17. Punishment of members for disciplinary offence**

(1) The Controller may punish a member who is found guilty of or pleads guilty to a disciplinary offence by-

- (a) reduction in rank;
- (b) stoppage or deferral of increment;
- (c) a fine not exceeding one month's salary (excluding allowances);
- (d) severe reprimand;
- (e) reprimand.

(2) The Secretary may punish a member who is found guilty of or pleads guilty to a disciplinary offence by-

- (a) the punishments described in subsection (1);
- (b) dismissal without retirement benefits;
- (c) compulsory retirement with full retirement benefits or reduced retirement benefits or without retirement benefits.

**18. Order for payment for damage, etc. to equipment, etc.**

The Secretary and the Controller may include in an order of punishment an order for the member to pay an amount not exceeding the cost of replacing or repairing any article of clothing, equipment or other property with which the Government has provided or entrusted him and which he has lost or damaged or contributed to its loss or damage.

**19. Summary dismissal of Officer for absence from duty**

In addition to any other disciplinary provisions applicable to him under this Regulation, where an Officer is absent from duty without leave for a period exceeding 21 days and it is reported to the Secretary that-

- (a) the Officer cannot be traced; or
- (b) on being required by notice in writing (sent to any address

through which it may reasonably be expected to reach him) to give, within 14 days, an excuse for his absence, the Officer has failed to give an excuse or to give an excuse that is acceptable to the Controller,

the Secretary may without further proceedings summarily dismiss the Officer.

## PART V REVIEWS AND APPEALS

### 20. Review

Where a disciplinary tribunal has found a member guilty of a disciplinary offence or the Controller has admonished him, a Senior Officer shall, within 7 days of the finding or the admonishment, review the finding or admonishment and either-

- (a) confirm the finding or admonishment; or
- (b) refer the finding or admonishment back to the disciplinary tribunal or the Controller, as the case may require, with a recommendation.

### 21. Appeals

(1) A member (including one who has been dismissed) may appeal to the Secretary **in writing** within 14 days from the day on which the member is informed of-

- (a) a finding by the disciplinary tribunal that he is guilty of a disciplinary offence;
- (b) any punishment imposed, other than under section 22,

against the finding or punishment.

(2) The Secretary may delegate to the Secretary for the Civil Service, or to a public officer not below the rank of Director of Bureau, the power to determine an appeal.

### 22. Powers of Secretary on appeal

Upon an appeal, the Secretary may-

- (a) confirm or reverse the finding;
- (b) confirm the punishment;
- (c) subject to section 25, substitute any other punishment which could have been imposed by him under section 17;

- 
- (d) remit the punishment in full or in part without substituting any other punishment;
  - (e) if he dismisses an appeal against a finding and no punishment has been imposed, treat the appeal as if it were a case referred to him for punishment and impose any punishment or take any other action within his powers.

**23. Further evidence may be admitted**

For the purpose of any appeal against a finding, the Secretary may-

- (a) accept in whole or in part the record of the evidence already taken;
- (b) direct that the whole or any part of the evidence be taken again or that additional evidence be taken.

**24. Suspension of punishment pending appeal**

In the event of an appeal, any punishment (other than a severe reprimand or reprimand) imposed on a member shall be suspended until the appeal is disposed of, withdrawn or abandoned.

**25. Greater punishment not to be imposed without opportunity to make representations**

The Secretary shall not impose a greater punishment under section 22 without first allowing the member a reasonable opportunity to be heard or to make representations in writing as to why the punishment should not be increased.

**[Mark-up – May 2012]**  
**(Based on L.N. 62 of 2012)**

**TRAFFIC WARDENS (DISCIPLINE) REGULATIONS**

(Cap 374, section 11)

**PART I**  
**PRELIMINARY**

**1. Citation**

These regulations may be cited as the Traffic Wardens (Discipline) Regulations.

**2. Interpretation**

In these regulations, unless the context otherwise requires-

“barrister” (大律師) has the meaning given by section 2(1) of the Legal Practitioners Ordinance (Cap. 159);

“civil service provident fund scheme” (公務員公積金計劃) means the Civil Service Provident Fund Scheme referred to in the government regulations;

“Commissioner” (處長) means the Commissioner of Police;

“defaulter” (犯規人員) means a traffic warden or senior traffic warden charged with a disciplinary offence;

“Defaulter Report” (員工犯規報告書) means the record of the case against —

(a) a traffic warden against whom a disciplinary charge is intended to be laid under regulation 4(1); or

(b) a defaulter;

“defence representative” (辯護代表) means a person specified in regulation 5B(1)(a) or (b) who represents a defaulter at a hearing;

“disciplinary offence” (違反紀律罪行) means an offence against discipline specified in regulation 3(2);

“government regulations” (政府規例) means the administrative rules known as the Government Regulations and any other administrative rules or instruments regulating the public service;

“hearing” (聆訊) means a hearing conducted in respect of a disciplinary offence;

“inspector” (督察) means an inspector of police, senior inspector of police or chief inspector of police;

“official record of proceedings” (程序正式紀錄) means a written record of the proceedings of a hearing made under regulation 8A(1);

“retirement benefits” (退休福利), in relation to a person, means-

- (a) the pension, gratuity or other allowance of that person as provided for under the Pensions Ordinance (Cap 89);
- (b) the pension benefits of that person as provided for under the Pension Benefits Ordinance (Cap 99); or
- (c) the part of that person’s beneficial interests in the civil service provident fund scheme that is attributable to sums derived from the voluntary contributions made by the Government, as employer, in respect of that person under section 11(4) of the Mandatory Provident Fund Schemes Ordinance (Cap 485), together with the income, profits or losses arising from any investment of those sums and of such income or profits;

“senior police officer” (高級警務人員) means a chief superintendent, assistant commissioner or senior assistant commissioner;

“solicitor” (律師) has the meaning given by section 2(1) of the Legal Practitioners Ordinance (Cap. 159);

“sub-divisional inspector” (分局局長) means an inspector who is appointed by or on behalf of the Commissioner to be the police officer in charge of a police sub-division;

“superintendent” (警司) includes senior superintendent of police;

“tribunal” (審裁小組) means-

- (a) an inspector, other than a chief inspector, authorized by the Commissioner to conduct proceedings under these regulations;
- (b) ~~a sub-divisional inspector; (Repealed);~~
- (c) a chief inspector;
- (d) a superintendent; or
- (e) a senior police officer.

### 3. Disciplinary offences

- (1) Any traffic warden who commits any disciplinary offence, and-
  - (a) pleads guilty before a tribunal; or
  - (b) is found guilty by a tribunal,

may be punished by such tribunal in accordance with these regulations.



- 
- (2) The offences against discipline are-
- (a) absence from duty without leave or good cause;
  - (b) sleeping on duty;
  - (c) conduct to the prejudice of good order and discipline;
  - (d) contravention of any orders or directions of the Commissioner, whether written or verbal;
  - (e) insubordination;
  - (f) being unfit for duty through intoxication;
  - (g) neglect of duty or orders;
  - (h) making a statement which is false in a material particular in the course of his duty;
  - (i) unlawful or unnecessary exercise of authority resulting in loss or injury to any other person or to the Government;
  - (j) wilful destruction or negligent loss of or injury to Government property;
  - (k) conduct ~~calculated~~ likely to bring the public service into disrepute.

## PART II

### INVESTIGATION INTO DISCIPLINARY OFFENCES, PUNISHMENT AND APPEALS

#### 4. Preliminary procedure

- (1) Where-
- (a) in the case of a traffic warden, other than a senior traffic warden, it appears to-
    - (i) any police officer of or above the rank of sergeant; or
    - (ii) any senior traffic warden; or
  - (b) in the case of a senior traffic warden, it appears to a police officer above the rank of sergeant,

that there is a prima facie case of a disciplinary offence on the part of such traffic warden or senior traffic warden, as the case may be, an appropriate charge or charges in respect thereof may be entered in a document entitled Defaulter Report which shall be the record of the case against such traffic warden or senior traffic warden and he shall be informed of the charge or charges as soon as possible.

- (2) The defaulter shall be notified of the date, place and time of the

hearing of the charge or charges, and of the name of the officer constituting the tribunal.

(3) No person who originates a complaint leading to a charge or assists in the investigation of such complaint shall act as the tribunal in respect of that charge.

## **5. Objection to officer hearing the case**

If the defaulter, prior to the hearing objects to the tribunal on the grounds of partiality or bias, he shall set out his grounds in full in writing and deliver them to such tribunal which shall not commence the hearing of the case but shall forward the document to a senior police officer who may appoint another tribunal to hear the case.

### **5A. Appointment of prosecutor**

The Commissioner must appoint a prosecutor for the purposes of proceedings against a defaulter under this Part.

### **5B. Representation of defaulter at hearing**

(1) A defaulter may be represented at a hearing by—

(a) (subject to the Commissioner's approval) a barrister or solicitor; or

(b) any other person of the defaulter's choice who is approved by the Commissioner for the purpose,

and the person specified in subparagraph (a) or (b) may conduct the defence on the defaulter's behalf.

(2) If the Commissioner gives approval under paragraph (1)(a), the defaulter may be represented at the hearing by a barrister or solicitor of the defaulter's choice.

(3) Despite paragraph (1), a defaulter must attend a hearing in person.

(4) If a defaulter is represented at a hearing by a barrister or solicitor, the tribunal and the prosecutor may separately be assisted by a barrister or solicitor at the hearing.

## **6. Access to records and documents**

A defaulter ~~charged under these regulations shall~~ must be given copies of or reasonable access to such police records and other documents ~~as he which the defaulter~~ requires, ~~which and~~ are necessary to enable ~~him the defaulter~~ to prepare ~~his the~~ defence, but not including those records for which the Government claims privilege.

## 7. Plea of defaulter

~~The defaulter shall appear before the tribunal and the charge or charges shall be read over to him and he shall be required to plead unequivocally guilty or not guilty and to each charge separately if there is more than one, and such plea shall be recorded.~~

(1) At the hearing, the tribunal must read to the defaulter any charge against him or her.

(2) The defaulter must plead in person guilty or not guilty to the charge, or to each charge separately if there is more than one, unequivocally.

(3) The tribunal must enter the plea or pleas on the official record of proceedings.

## 8. Procedure at hearing

(1) ~~Where~~~~If~~ a defaulter pleads guilty to a charge at a hearing~~an offence, he shall be asked if he~~ the tribunal must ask if the defaulter wishes to make or produce to the tribunal a statement ~~on which contains any relevant matters which he desires to~~ that the defaulter wishes to be taken into consideration by the tribunal, and such a statement ~~shall be recorded~~ must be entered on the official record of proceedings.

(2) ~~Where a~~~~If~~ the defaulter ~~has pleaded~~pleads not guilty to the charge and evidence for the prosecution is called, witnesses ~~shall are~~ to be called in support of the charge ~~or charges~~and, at the conclusion of the evidence of each ~~such of those~~ witnesses, the defaulter or the defence representative may cross-examine ~~such that~~ witness, who may then be re-examined.

(3) When the examination of all witnesses in support of the charge ~~or charges~~has been completed, the tribunal must ask if the defaulter ~~shall be asked whether he~~wishes to—

(a) give evidence; and

(b) call witnesses.

(4) ~~Where a~~~~If~~ the defaulter gives evidence, ~~he the~~ defaulter may be cross-examined and ~~re-examined~~ such witnesses as ~~he desires to call may, after giving evidence, be~~ and any witness called by the defaulter may be ~~examined~~, cross-examined and ~~them be~~re-examined~~by the defaulter~~.

(5) At the close of the defence case, witnesses may be called with the consent of the tribunal ~~hearing the case~~to give evidence in rebuttal, and may be examined, cross-examined, and re-examined, ~~and~~.

(6) ~~at~~At the conclusion of all the evidence~~the defaulter~~, the prosecutor or any barrister or solicitor assisting the prosecutor may address the tribunal and ~~thereafter the prosecutor then the defaulter or the defence representative may~~

address the tribunal in reply.

~~(6) — Such exhibits as are produced by witnesses shall be available for inspection by the defaulter.~~

(7) ~~Notwithstanding this regulation, the~~ The tribunal may—

(a) call ~~any~~ witnesses; and

(b) ask ~~any witness such any~~ questions ~~of any witness,~~

~~as that~~ it considers ~~will may~~ assist it in determining the case.

(8) Evidence must not be taken on oath or affirmation.

(9) The defaulter, the defence representative, the prosecutor and any barrister or solicitor assisting the prosecutor may inspect any exhibit produced to the tribunal by a witness.

~~(8)10~~ The tribunal may adjourn the ~~case hearing~~ from time to time and ~~where if~~ an application is made for an adjournment ~~it shall be shown,~~ the applicant must show to the satisfaction of the tribunal ~~by the applicant that such a course the adjournment~~ would serve the ends of justice ~~and.~~

(11) ~~any~~ An adjournment granted ~~shall under~~ paragraph (10) must be for a reasonable period only.

~~(9) — The tribunal shall keep a record of the evidence heard which shall be signed and dated by it and the interpreter, if any, on each adjournment and on the termination of the hearing.~~

~~(10) — Evidence shall not be taken on oath or affirmation.~~

~~(11) — No barrister or solicitor shall appear on behalf of the defaulter.~~

## 8A. Record of proceedings

(1) The tribunal must make, or cause to be made, a written record of the proceedings of a hearing, and the record is to form part of the Defaulter Report.

(2) The tribunal may make, or cause to be made, an audio recording or audio and visual recording of the proceedings, or any part of the proceedings, of a hearing.

## 9. Adding or amending charges

(1) ~~A~~ The prosecutor may amend a charge ~~may be amended~~ or add a further charge ~~added~~ at any time ~~prior to before~~ the tribunal communicates a finding ~~being communicated to a the defaulter charged under these regulations~~ and.

(2) ~~any~~ The tribunal must read and explain any amended or new charge ~~shall be read and explained to such to the defaulter who shall—~~.

(3) The defaulter must plead in person to the amended or new charge, or to each amended or new charge separately if there is more than one, and he or she—

~~(a) be called upon to plead thereto; and~~

~~(ba)~~ ~~be~~ is entitled to a reasonable adjournment to prepare ~~his~~ a further defence;

~~and in such case a defaulter may~~

~~(ib)~~ may recall any witnesses; and

~~(ic)~~ may call ~~such any~~ further witnesses as he or she thinks fit, and

(4) ~~any~~ A witness giving evidence under this ~~regulation~~ Part may be cross-examined and re-examined.

## 10. Proceedings after hearing

(1) The tribunal shall at the conclusion of the hearing announce its finding on the charges or shall reserve its finding.

(2) The finding shall be entered on the Defaulter Report and if the finding has been reserved the tribunal shall call the defaulter before it to announce its finding.

(3) If the defaulter has pleaded guilty or is found guilty he shall be asked if he wishes to make a statement on relevant matters which he desires to be taken into consideration, and any statement so made shall be recorded by the tribunal.

(4) If the defaulter has pleaded guilty or is found guilty, the tribunal shall then announce its award or shall reserve its award and the award shall be endorsed on the Defaulter Report and if the award has been reserved the tribunal shall call the defaulter before it to announce its award,

(5) If the defaulter has pleaded guilty or is found guilty and the tribunal considers that no punishment shall be awarded it shall-

(a) endorse the Defaulter Report to that effect; and

(b) personally advise the defaulter of the endorsement.

(6) Where the tribunal is an inspector and a defaulter pleads guilty or is found guilty, and the tribunal considers that the punishment which it can award is insufficient having regard to all relevant circumstances, the tribunal shall not make an award but shall-

(a) endorse the Defaulter Report to this effect;

(b) send the Defaulter Report to a superintendent; and

(c) inform the defaulter of this action,

and subject to these regulations, the superintendent may make an award which he shall communicate personally to the defaulter.

(7) Where-

- (a) the tribunal is a superintendent and a defaulter pleads guilty or is found guilty, or where a tribunal refers a case to a superintendent under paragraph (6); and
- (b) the superintendent considers that the punishment which he can award is insufficient having regard to all relevant circumstances,

he shall not make an award but shall-

- (i) endorse the Defaulter Report to this effect;
- (ii) send the Defaulter Report to a senior police officer; and
- (iii) inform the defaulter of this action,

and subject to these regulations, the senior police officer may make an award which he shall communicate personally to the defaulter.

## 11. Review

(1) The tribunal hearing a case under these regulations may, at any time within 7 days after having announced its finding or award to the defaulter, review the case and arrive at a different finding or award which shall subject to paragraph (2) stand in place of the original finding or award and be binding on the defaulter.

(2) When the tribunal reviews a case, it shall call the defaulter before it to announce its finding or award on the review, but shall not award a greater punishment unless the defaulter is given an opportunity of making oral representations to it as to why the punishment should not be increased.

(3) Any review under this regulation shall be at the sole discretion of the tribunal hearing the case and may be made-

- (a) on the tribunal's own motion; or
- (b) on application by the defaulter in writing.

### 11A. Proceedings in defaulter's absence

Where a defaulter is required to appear in person in any proceedings under this Part and repeatedly fails to appear, the tribunal may proceed in the defaulter's absence if satisfied that the defaulter has no reasonable excuse for the failures.

## 12. Punishment

(1) ~~Any~~A traffic warden who ~~has pleaded guilty to or~~ is found guilty ~~by a tribunal~~ of a disciplinary offence ~~before or by the tribunal~~ may, subject to regulation 17, be awarded ~~any of~~ the following punishments by ~~such~~ the

tribunal—

- (a) caution;
- (b) reprimand;
- (c) severe reprimand;
- (d) **deferment or stoppage of increment;**
- (~~de~~) forfeiture of not more than ~~one~~ 1 month's pay except in the case of absence without good cause when forfeiture of pay ~~shall~~ extends to ~~cover~~ the period of absence in addition to any other punishment awarded;
- (~~ef~~) reduction in rank;
- (~~fg~~) an order to resign ~~forthwith~~ immediately without salary in lieu of notice;
- (~~gh~~) compulsory retirement with full retirement benefits or reduced retirement benefits or without retirement benefits; ~~or~~
- (~~hi~~) dismissal without retirement benefits.—

(2) ~~Where the tribunal does not award any punishment and refers its findings—~~ If a traffic warden has pleaded guilty to or is found guilty of a disciplinary offence before or by the tribunal, and the tribunal sends the Defaulter Report to a superintendent or a senior police officer ~~to make an award, under regulation 10(6)(b) or (7)(b)(ii),~~ the superintendent or ~~the~~ senior police officer may exercise all the powers of punishment conferred ~~upon him~~ by regulation 17.

(3) ~~Notwithstanding—Despite~~ this regulation, a traffic warden ~~who—~~

- (a) has pleaded guilty to or is found guilty of ~~any~~ a disciplinary offence; and
- (~~ab~~) ~~is to be~~ dismissed by the Commissioner or a senior police officer, ~~shall, where appropriate~~

~~must, if he or she is a senior traffic warden, be reduced in rank before the dismissal;—or.~~

(4) Despite this regulation, a traffic warden ~~who—~~

- (a) has pleaded guilty to or is found guilty of a disciplinary offence; and
- (b) ~~has been~~ ordered by the Commissioner or a senior police officer to resign ~~shall,~~

~~must, if he or she fails to ~~do so~~ comply with the order, be dismissed without retirement benefits. under paragraph (2).—~~

### 13. Appeals

- (1) Any traffic warden may within 14 days of the announcement to

him by, or the receipt of a communication from, as the case may be, tribunal of any finding or punishment-

- (a) where the finding or punishment was made by an inspector sitting as the tribunal, appeal in writing to a senior police officer who shall direct that the appeal be determined by a superintendent;
- (b) where the finding or punishment was made by a superintendent sitting as the tribunal or where he is aggrieved by a finding or punishment made on appeal by a superintendent under sub-paragraph (a), appeal in writing to a senior police officer;
- (c) where the decision was made by a senior police officer sitting as the tribunal or where he is aggrieved by a decision of a senior police officer on an appeal under sub-paragraph (b), appeal in writing to the Commissioner by petition which shall contain such representations as may be relevant to the appeal.

(2) In every case where an appeal has been lodged any punishment awarded shall be suspended pending the determination of the appeal.

#### **14. Powers of superintendents, senior police officer and Commissioner on appeal**

(1) A superintendent may, of his own motion within 14 days from the date of any finding or punishment awarded by an inspector sitting as the tribunal, or upon any appeal under regulation 13(1)(a)-

- (a) confirm any finding or vary any finding from guilty to not guilty; and
- (b) confirm, remit or, subject to regulation 17, vary any punishment awarded, but no greater punishment ~~shall~~ **may** be awarded ~~by him~~ unless the defaulter is given an opportunity of making **oral** representations ~~to him~~ as to why the **original** punishment should not be increased.

(2) A superintendent shall not act of his own motion if he originated or assisted in the investigation of the complaint leading to the proceedings.

(3) A senior police officer may, of his own motion within 14 days from the date of any finding or punishment awarded by a superintendent sitting as the tribunal or upon any appeal under regulation 13(1)(b)-

- (a) confirm or vary any finding of the tribunal and substitute any finding which the tribunal could have made on the evidence adduced; or
- (b) order a rehearing of the case by another tribunal.

(4) The Commissioner may, of his own motion within 14 days from the



date of any finding or punishment awarded by a senior police officer sitting as the tribunal, or upon any appeal under regulation 13(1)(c)-

- (a) confirm or vary any finding of the tribunal and substitute any finding which the tribunal could have made on the evidence adduced; or
  - (b) order a rehearing of the case by another tribunal.
- (5) Notwithstanding paragraphs (3) and (4)-
  - (a) a senior police officer may confirm or remit any punishment awarded by a tribunal consisting of an officer of the rank of superintendent or below, or may, subject to regulation 17, substitute any other punishment;
  - (b) the Commissioner may confirm or remit any punishment awarded by a tribunal consisting of an officer of the rank of senior police officer or below, or may, subject to regulation 17, substitute any other punishment.
- (6) The Commissioner or a senior police officer ~~shall~~**must** not—
  - (a) substitute for any punishment awarded by a tribunal ~~or by such other tribunal, as the case may be,~~ any greater punishment ~~without first calling on unless~~ the defaulter **is given an opportunity of making representations as to show cause why such the original** punishment should not be increased; ~~or~~
  - (b) substitute for a finding of not guilty a finding of guilty; or
  - (c) order a rehearing of the case where the finding was one of not guilty.
- (7) ~~Upon any~~**On an** appeal under regulation 13(1) or ~~where if~~ he **or she** acts of his **or her** own motion under this regulation, a superintendent, senior police officer or the Commissioner—
  - (a) may permit the defaulter to appear **in person** before him **or her** ~~in person to support his appeal;~~
  - (b) ~~subject to these regulations,~~ may hear ~~such any~~ additional evidence ~~as the superintendent that he or she~~ considers relevant; and
  - (c) ~~subject to these regulations, shall~~**must** announce **personally before the defaulter** or communicate in writing to the defaulter the outcome of the appeal or the action taken under this regulation.

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### PART III

#### MISCELLANEOUS PROVISIONS

##### **15. Power to suspend punishment**

(1) Subject to this regulation, any punishment awarded by a tribunal may be suspended by that tribunal or by any police officer of higher rank than the officer or officers constituting the tribunal for a period of not less than 6 months nor more than 1 year.

(2) Subject to paragraph (3), where any punishment has been suspended under this regulation the tribunal or any police officer of higher rank shall at the expiration of the period of suspension review the case or may, at any time during the period of suspension, review the case, taking into consideration such reports on the conduct of the defaulter during the period of suspension as may be available.

(3) The tribunal or officer of higher rank may remit or reduce the punishment and in such an event shall cause any entry relating to the offence which has been made in the records of the defaulter to be expunged or altered, as the case may be, or order the punishment to be executed forthwith, except that if, during the period of suspension, the defaulter is convicted of a further disciplinary offence the suspended punishment shall be executed forthwith and any punishment on such further offence shall not be suspended.

(4) This regulation shall not affect the lodging and hearing of an appeal.

##### **16. Payment for loss or damage to property**

(1) Where a tribunal has found a traffic warden guilty of a disciplinary offence, the tribunal may, in addition to or in lieu of any punishment he is by these regulations empowered to award, order the defaulter to pay in full or in part-

- (a) the cost of repairing or replacing any article of clothing, equipment or property whatsoever entrusted or supplied to the defaulter in his capacity as a traffic warden which has been lost or damaged;
- (b) the cost of repairing or replacing any Government property lost or damaged by him; or
- (c) the compensation paid, ex gratia or otherwise, by the Government to any person in respect of the loss or damage of that person's property by the defaulter,

in each case only if the loss or damage has resulted from the defaulter's neglect or fault and the amount ordered to be paid does not exceed his salary for one month.

(2) A police officer of or above the rank of superintendent may require a traffic warden to pay to the Government in full or in part-

- (a) the cost of repairing or replacing any article of clothing, equipment or property whatsoever entrusted to the traffic warden in his capacity as a traffic warden and lost or damaged by him;
- (b) the cost of repairing or replacing any Government property lost or damaged by him; or
- (c) the compensation paid, ex gratia or otherwise, by the Government to any person in respect of the loss or damage of that person's property by the traffic warden,

in each case only if the loss or damage has resulted from the traffic warden's neglect or fault and the amount ordered to be paid does not exceed his salary for one month.

(3) For the purpose of enabling due inquiry to be made as to whether any traffic warden should be required to pay any amount under paragraph (2), affording him due opportunity to make representations and enabling any requirement under that paragraph to be appealed against and reviewed, Part II shall apply to and in respect of such a requirement as it applies to and in respect of a finding of guilty of a disciplinary offence and an award of punishment.

## **17. Awards**

The powers of punishment of a tribunal and the Commissioner shall be those which are set out in the Schedule.

## **18. Effect of award**

Subject to regulation 15, an award of punishment made under these regulations shall take effect from the date of announcement or communication to the defaulter of the award.

## **19. Transitional provisions**

(1) The amendments made by sections 4, 13 and 16 of the amendment regulation (which amend regulations 3 and 12 of, and the Schedule to, the pre-amended regulations) do not apply to proceedings under these regulations conducted in respect of a defaulter to whom a notice was given before the commencement date under regulation 4(2) of the pre-amended regulations, and regulations 3 and 12 of, and the Schedule to, the pre-amended regulations apply in respect of those proceedings as if those amendments had not been made.

(2) In this regulation—

“amendment regulation” (《修訂規例》) means the Traffic Wardens (Discipline)

(Amendment) Regulation 2012 (L.N. of 2012);

“commencement date” (生效日期) means the commencement date of the amendment regulation appointed under section 1 of the amendment regulation;

“pre-amended regulations” (《修訂前規例》) means the Traffic Wardens (Discipline) Regulations (Cap. 374 sub. leg. J) as in force immediately before the commencement date.

**SCHEDULE**

[regulation 17]

**Powers of Punishment**

Tribunal (1)	Punishment that may be imposed upon	
	Traffic Warden (2)	Senior Traffic Warden (3)
Inspector	1. (a) Caution; (b) Reprimand; or (c) In the case of absence without good cause, forfeiture of pay for the period of absence in addition to any other punishment awarded. 2. Order for payment under regulation 16. 3. Suspend punishment under regulation 15.	1. (a) Caution; (b) Reprimand; or (c) In the case of absence without good cause, forfeiture of pay for the period of absence in addition to any other punishment awarded. 2. Order for payment under regulation 16. 3. Suspend punishment under regulation 15.
Superintendent	1. (a) Caution; (b) Reprimand; (c) Severe reprimand; or (d) Forfeiture of not more than 7 days' pay except in the case of absence without good cause when forfeiture of pay <del>shall</del> extends to the period of absence in addition to any other punishment awarded. 2. Order for payment under regulation 16. 3. Suspend punishment under regulation 15	1. (a) Caution; (b) Reprimand; or (c) Severe reprimand; or (d) Forfeiture of not more than 7 days' pay except in the case of absence without good cause when forfeiture of pay <del>shall</del> extends to the period of absence in addition to any other punishment awarded. 2. Order for payment under regulation 16 3. Suspend punishment under regulation 15.

Tribunal (1)	Punishment that may be imposed upon	
	Traffic Warden (2)	Senior Traffic Warden (3)
Senior Police Officer	<p>1. (a) Caution;</p> <p>(b) Reprimand;</p> <p>(c) Severe reprimand; <del>or</del></p> <p><b>(ca) Deferment or stoppage of increment; or</b></p> <p>(d) Forfeiture of not more than 1 month's pay except in the case of absence without good cause when forfeiture of pay <del>shall</del> extends to the period of absence in addition to any other punishment awarded.</p> <p>2. Order for payment under regulation 16.</p> <p>3. Suspend punishment under regulation 15.</p> <p>4. In place of, or in addition to any punishment awarded under paragraph 1 above,-</p> <p>(a) dismissal without retirement benefits;</p> <p>(b) order to resign <b>immediately forthwith</b>, without salary in lieu of notice; or</p> <p>(c) compulsory retirement with full retirement benefits or reduced retirement benefits or without retirement benefits</p>	<p>1. (a) Caution;</p> <p>(b) Reprimand;</p> <p>(c) Severe reprimand;</p> <p><b>(ca) Deferment or stoppage of increment;</b></p> <p>(d) Forfeiture of not more than 1 month's pay except in the case of absence without good cause when forfeiture of pay <del>shall</del> extends to the period of absence in addition to any other punishment awarded; or</p> <p>(e) Reduction in rank.</p> <p>2. In place of, or in addition to any punishment set out in paragraph 1 above,-</p> <p>(a) dismissal without retirement benefits and reduction in rank before dismissal;</p> <p>(b) order to resign <b>immediately forthwith</b>, without salary in lieu of notice; or</p> <p>(c) compulsory retirement with full retirement benefits or reduced retirement benefits or without retirement benefits.</p> <p>Order for payment under regulation 16.</p> <p>Suspend punishment under regulation 15.</p>

Tribunal (1)	Punishment that may be imposed upon	
	Traffic Warden (2)	Senior Traffic Warden (3)
Commissioner of Police	<p>1. (a) Caution;</p> <p>(b) Reprimand;</p> <p>(c) Severe reprimand; <del>or</del></p> <p><b>(ca) Deferment or stoppage of increment; or</b></p> <p>(d) Forfeiture of not more than 1 month's pay except in the case of absence without good cause when forfeiture of pay <del>shall</del> extends to the period of absence in addition to any other punishment awarded.</p>	<p>(a) Caution;</p> <p>(b) Reprimand;</p> <p>(c) Severe reprimand;</p> <p><b>(ca) Deferment or stoppage of increment;</b></p> <p>(d) Reduction in rank; or</p> <p>(e) Forfeiture of not more than 1 month's pay except in the case of absence without good cause when forfeiture of pay <del>shall</del> extends to the period of absence in addition to any other punishment awarded.</p>
	<p>2. In place of, or in addition to any punishment awarded under paragraph 1 above,-</p> <p>(a) dismissal without retirement benefits;</p> <p>(b) order to resign <b>immediately forthwith</b>, without salary in lieu of notice; or</p> <p>(c) compulsory retirement with full retirement benefits or reduced retirement benefits or without retirement benefits.</p> <p>3. Order for payment under regulation 16.</p> <p>4. Suspend punishment under regulation 15.</p>	<p>2. In place of, or in addition to any punishment awarded under paragraph 1 above,-</p> <p>(a) dismissal without retirement benefits and reduction in rank before dismissal;</p> <p>(b) order to resign <b>immediately forthwith</b>, without salary in lieu of notice; or</p> <p>(c) compulsory retirement with full retirement benefits or reduced retirement benefits or without retirement benefits.</p> <p>3. Order for payment under regulation 16.</p> <p>4. Suspend punishment under regulation 15.</p>

[*Mark-up – May 2012*]  
(Based on L.N. 63 of 2012)

## CUSTOMS AND EXCISE SERVICE (DISCIPLINE) RULES

(Cap 342 section 16)

### PART I PRELIMINARY

#### 1. Citation

These rules may be cited as the Customs and Excise Service (Discipline) Rules.

#### 2. Interpretation

In these rules, unless the context otherwise requires—

“barrister” (大律師) has the meaning given by section 2(1) of the Legal Practitioners Ordinance (Cap. 159);

“Commissioner” (關長) in rules 14, 18(2) and (3), 18A, 19, 20, 21 (1)(b), 22, 24 and 26 does not include any other senior officer, but elsewhere in these rules includes any other senior officer to the extent that he may exercise and perform the powers, functions and duties of the Commissioner pursuant to section 7 of the Ordinance;

“defence representative” (辯護代表) means a person specified in rule 6(1)(a), (b) or (c) who represents an officer charged at a hearing;

“hearing” (聆訊) means a hearing conducted in respect of a disciplinary offence;

“inspector” (督察級人員) means a member holding any office in Part III of Schedule 1 to the Ordinance-;

“officer charged” (被控人員) means a subordinate officer charged with a disciplinary offence;

“official record of proceedings” (程序正式紀錄) means a written record of the proceedings of a hearing made under rule 8A(1);

“solicitor” (律師) has the meaning given by section 2(1) of the Legal Practitioners Ordinance (Cap. 159).



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## PART II

### DISCIPLINARY OFFENCES

#### 3. Disciplinary offences

A member commits a disciplinary offence who—

- (a) is absent from duty without leave or good cause;
- (b) sleeps on duty without permission from a superior officer;
- (c) fails to report immediately to a superior officer any suspected breach of discipline by another member;
- (d) fails to report immediately to a superior officer or a police officer any offence which he suspects has been committed against an Ordinance specified in Schedule 2 to the Ordinance;
- (e) neglects or refuses to obey any lawful order given by a superior officer whether orally or in writing, including any Standing Order made under section 20 of the Ordinance;
- (f) is unfit for duty by reason of alcoholic drink or of drugs taken otherwise than under medical direction;
- (g) neglects or without good and sufficient cause fails to do promptly and diligently anything which it is his duty to do;
- (h) with intent to deceive, destroys, mutilates, falsifies or conceals a document connected with his duty;
- (i) with intent to deceive, makes a statement in the course of duty which is false in a material particular;
- (j) in purported exercise of authority, does or omits to do any act otherwise than in accordance with law;
- (k) wilfully or negligently damages or destroys or negligently loses any Government or other property with which he has been provided or entrusted;
- (l) by his conduct brings the public service into disrepute;
- (m) by his conduct prejudices the good order and discipline of the Customs and Excise Service.

## PART III

### PROCEDURE

#### 4. Preliminary procedure

If the Commissioner believes that a subordinate officer may have committed a disciplinary offence he shall inform the officer of the circumstances giving rise to his belief and invite the officer to submit an explanation in writing within a specified period not exceeding 7 days.

**4A. Admonishment procedure if offence admitted**

(1) Where the Commissioner under rule 4 also informs the officer that if he admits the disciplinary offence he may be admonished, and the officer does admit the offence, the Commissioner shall not prefer a charge under rule 5 and he may in writing admonish the officer.

(2) Even if the Commissioner does not so inform the officer under subrule (1), and the officer admits the disciplinary offence, the Commissioner may in writing admonish the officer instead of preferring a charge under rule 5.

**5. Charging and plea**

(1) If, after the expiration of the period referred to in rule 4, the Commissioner considers there is a prima facie case of a disciplinary offence against the officer he shall, unless he has admonished the officer under rule 4A—

- (a) prefer against him such charge or charges, relevant to the circumstances referred to in rule 4, as he thinks fit; and
- (b) either state that he will hear and determine the proceedings himself or appoint another senior officer to hear and determine the proceedings.

(2) A charge shall be in writing and shall be served on the officer together with a notice—

- (a) naming the senior officer who will hear and determine the proceedings;
- (b) stating the place and time at which the charge will be dealt with, being a time not earlier than 7 days from the date of service of such notice;
- (c) requiring the officer, in respect of each charge, to notify the senior officer referred to in paragraph (a), in writing within 5 days of such service whether he pleads guilty or not guilty;
- (d) advising him that if he pleads guilty he may make submissions in writing in mitigation of punishment.

**5A. Appointment of prosecutor**

The Commissioner must appoint for the purposes of the proceedings under these rules against an officer charged a prosecutor who is a member not below the rank of the officer charged.

**6. Representation of officer charged at hearing**

(1) ~~The Commissioner shall appoint a member not below the rank of the officer charged as a prosecutor and the officer charged shall have the right to An~~

officer charged may be represented by at a hearing by—

- (a) a subordinate officer of ~~his~~ the choice ~~who may conduct his defence on his behalf~~, of the officer charged, other than a subordinate officer who is a barrister or solicitor;
- (b) (subject to the Commissioner's approval) a barrister or solicitor; or
- (c) any other person of the choice of the officer charged who is approved by the Commissioner for the purpose,

and the person specified in paragraph (a), (b) or (c) may conduct the defence on behalf of the officer charged.

(2) ~~The officer charged shall not be entitled to be represented by counsel or a solicitor.~~ If the Commissioner gives approval under subrule (1)(b), the officer charged may be represented at the hearing by a barrister or solicitor of the officer's choice.

(3) Despite subrule (1), the officer charged must attend the hearing in person.

(4) If the officer charged is represented at the hearing by a barrister or solicitor, the Commissioner and the prosecutor may separately be assisted by a barrister or solicitor at the hearing.

## 7. Documents to be supplied to ~~accused~~ officer charged

An officer charged ~~with a disciplinary offence shall~~ must, as soon as possible, be supplied with—

- (a) a copy of any written statement made by ~~him~~ the officer under rule 4;
- (b) a copy of—
  - (i) the report, allegation or complaint on which the charge is founded ~~(or so much thereof as relates to him)~~ or that part of the report, allegation or complaint relating to the officer; and
  - (ii) ~~of any report thereon~~ on the document specified in subparagraph (i),

~~notwithstanding that they may be~~ whether or not those documents are classified confidential;

- (c) a copy of any statement relating to the charge made by any witness to be called in support of the charge, and the witness's name and address; and
- (d) a copy of any statement relating to the charge made by any person, (other than a witness to be called in support of the charge); to the Commissioner or to any person acting on ~~his~~ the Commissioner's behalf, and the ~~person's~~ name and address of the person making that statement.

## 8. Procedure at hearing

(1) ~~The~~An officer charged ~~shall~~must attend at the place of hearing at the time of which notice has been given.

(2) The Commissioner must read the charge ~~shall be read~~ to the officer charged, who may then change his or her plea, if he or she so wishes.

(3) If the officer charged pleads guilty ~~such the~~ plea ~~shall is~~ to be entered on the official record of proceedings, and ~~he shall be asked~~ the Commissioner must ask if ~~he the officer~~ wishes to make any statement; ~~and~~.

(4) ~~he~~The officer charged may then—

(a) make a statement, which ~~shall~~must be recorded on the official record of proceedings; or

(b) ~~may~~hand in a statement of matters which ~~he desires~~the officer wishes to be taken into consideration by the Commissioner.

(45) If ~~an the~~ officer charged ~~has pleaded~~pleads not guilty ~~to any charge~~, the prosecutor or any barrister or solicitor assisting the prosecutor may make an address setting out generally the facts of the case and may call witnesses in support of the charge; ~~and on the conclusion of the evidence of each witness the officer charged, or the officer defending him, may cross-examine the witness and thereafter the~~ and those witnesses may be cross-examined and re-examined.

(56) The Commissioner may take the evidence of a witness ~~may be taken~~ by reference to a written statement made by ~~him the~~ witness, which may be amended or added to by the witness at the hearing.

(67) When the ~~examination of~~prosecutor or any barrister or solicitor assisting the prosecutor has examined all witnesses in support of the charge, ~~has been completed~~the officer charged or the ~~officer defending him~~defence representative may address the Commissioner only for the purpose of showing that no prima facie case has been established; ~~and~~

(8) ~~if~~If it appears to the Commissioner that there is a prima facie case, the Commissioner must ask if the officer charged ~~shall be asked whether he~~ wishes to give evidence; and ~~whether he wishes to~~ call witnesses.

(79) If the officer charged gives evidence, ~~he the~~ officer may be cross-examined and re-examined and ~~such any~~ witnesses ~~as he desires to~~ called by the officer may be examined, cross-examined and re-examined.

(810) At the conclusion of all the evidence, the prosecutor or any barrister or solicitor assisting the prosecutor may address the Commissioner and ~~thereafter then~~ the officer charged or the ~~officer defending him~~defence representative may make an address in reply.

(9) ~~Any exhibit produced by a witness shall be available for inspection by the officer charged, the officer defending him and the prosecutor.~~

(1011) The Commissioner ~~shall be entitled to~~may ask ~~such questions of~~ any witness any question ~~as he~~ that the Commissioner considers will assist in

determining the issues raised. ~~and~~

(12) The Commissioner may at any time call ~~such any~~ witnesses ~~at any time as he whom the Commissioner~~ considers may be able to assist in ~~the determination of determining~~ the issues raised.

(13) Evidence must not be taken on oath or affirmation.

(14) The officer charged, the defence representative, the prosecutor and any barrister or solicitor assisting the prosecutor may inspect any exhibit produced to the Commissioner by a witness.

~~(15)~~ The Commissioner may adjourn the hearing ~~of the case may be adjourned~~ from time to time as ~~may appear the~~ Commissioner considers necessary for the proper determination of the proceedings.

~~(12) A record of the proceedings at the hearing of the case shall be taken and, if the officer charged contemplates an appeal under these rules, a transcription of the record shall be made and a copy thereof supplied to him at his request made within the period during which the appeal may be brought.~~

~~(13) Evidence shall not be taken on oath.~~

## 8A. Record of proceedings

(1) The Commissioner must make, or cause to be made, a written record of the proceedings of a hearing.

(2) The Commissioner may make, or cause to be made, an audio recording or audio and visual recording of the proceedings, or any part of the proceedings, of a hearing.

(3) If an officer charged wishes to appeal under rule 20, the officer may make a request to the Commissioner within the period mentioned in rule 23 for a copy of the official record of proceedings.

(4) On a request under subrule (3), the Commissioner must supply the officer charged with a copy of the official record of proceedings.

## 9. Adding or amending charges

(1) A charge may be amended or a further charge added at any time prior to a finding being communicated to the officer charged.

(2) The Commissioner must read and explain the amended or new charge ~~shall be read and explained~~ to the officer charged, ~~and he shall who must~~ be called upon to plead to ~~such the~~ amended or new charge in person and ~~shall be is~~ entitled to a reasonable adjournment to prepare ~~his a~~ further defence.

(3) ~~The provisions of rule 8 and of subrules (1) and (2) of this rule shall apply to Rule 8 applies in respect of the amended or new charge, with such modifications as are necessary.~~

**9A. Proceedings in the absence of officer charged**

Where an officer charged is required to appear in person in any proceedings under these rules and repeatedly fails to appear, the Commissioner may proceed in the absence of the officer if satisfied that the officer has no reasonable excuse for the failures.

PART IV  
PUNISHMENT

**10. Proceedings after hearing of charge**

At the conclusion of the hearing of a charge, the Commissioner shall—

- (a) if in his opinion the evidence does not show that a disciplinary offence has been committed, dismiss it;
- (b) if in his opinion the evidence does show that a disciplinary offence has been committed, either—
  - (i) impose a punishment within his powers; or
  - (ii) refer the case to the Chief Executive.

**11. Reference of case to Chief Executive**

(1) ~~Whenever~~ If the Commissioner refers a case to the Chief Executive, ~~under rule 10(b) he shall the Commissioner must forward to the Chief Executive—~~

- (a) a copy of the official record of ~~the~~ proceedings (including the charge) certified by ~~himself the Commissioner~~ to be a true copy of the original ~~thereof~~;
- (b) the ~~subordinate officer's~~ record of service ~~of the officer charged~~; and
- (c) a report setting out—
  - (i) ~~his the Commissioner's~~ reasons for considering the charge proved; and
  - (ii) ~~his the Commissioner's~~ recommendation with respect to punishment or otherwise.

(2) ~~Whenever the Commissioner so refers a case he shall notify the subordinate officer that he has done so and that~~ The Commissioner must inform the officer charged of the reference by serving on the officer a notice in writing.

(3) ~~the~~ The officer charged may make representations in writing to the Chief Executive ~~in mitigation of punishment~~ within 14 days ~~of such from the service of the notice under subrule (2) or such any further period as that~~ the Chief Executive

may allow.

## 12. Procedure when case referred to Chief Executive

~~Upon~~ On reference to ~~him~~ the Chief Executive of a case and after consideration of any representations made by the ~~subordinate~~ officer charged, the Chief Executive ~~may~~ must—

- (a) if ~~he is of~~ in the Chief Executive's opinion ~~that~~ the charge has not been proved, either—
  - (i) dismiss ~~it~~ the charge; or
  - (ii) order a further investigation or a fresh investigation in ~~such a~~ manner and by ~~such a~~ person or persons ~~as he that~~ the Chief Executive thinks fit;
- (b) if ~~he is of~~ in the Chief Executive's opinion ~~that~~ the charge is proved, or if, after any further or fresh investigation ordered under paragraph (a)(ii), ~~he~~ the Chief Executive is of ~~such that~~ opinion, impose a punishment within ~~his~~ the Chief Executive's powers.

## 13. Punishment imposed to be entered in record of service

(1) Every punishment imposed shall be entered in the service record of the officer.

(2) An entry of an admonishment given under rule 4A shall be removed from an officer's service record one year after the admonishment was given unless during the year he was punished for another offence.

## 14. Procedure where Commissioner has delegated ~~his~~ powers

(1) ~~Where~~ If a senior officer other than the Commissioner exercises or performs ~~any of the~~ Commissioner's powers, functions or duties ~~described in rule 4, 4A, 5, 6, 10, 11 or 12 references in those rules~~ under rules 10 and 11—

- (a) a reference in those rules to the Commissioner; ~~shall be read as if they were~~ is to be regarded as a references to ~~that other the~~ senior officer; and
- (b) a reference in those rules and rule 12 to the Chief Executive; ~~shall be read as if they were~~ is to be regarded as a references to the Commissioner.

(2) ~~but any~~ A case referred to the Commissioner by another senior officer ~~pursuant to~~ under rule 10(b)(ii) (as modified by ~~this rule~~) subrule (1) may be referred to the Chief Executive by the Commissioner in accordance with rule 11.

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**15. Punishment of inspectors for disciplinary offence**

An inspector who is found guilty of or pleads guilty to a disciplinary offence may be punished by the imposition of any one or more of the following punishments—

- (a) by the Commissioner—
  - (i) reduction in rank;
  - (ii) stoppage or deferment of increment;
  - (iii) where the offence is against rule 3(a), forfeiture of pay (excluding allowances) for period not exceeding one month or the period of absence, whichever is the greater;
  - (iv) a fine not exceeding one month's salary (excluding allowances);
  - (v) severe reprimand;
  - (vi) reprimand;
  - (vii) extra duties;
- (b) by the Chief Executive—
  - (i) the punishments described in paragraph (a);
  - (ii) dismissal without retirement benefits;
  - (iii) compulsory retirement with full retirement benefits or reduced retirement benefits or without retirement benefits.

**16. Punishment of customs officers for disciplinary offence**

A customs officer who is found guilty of or pleads guilty to a disciplinary offence may be punished by the Commissioner or the Chief Executive by the imposition of any one or more of the punishments referred to in rule 15(b).

**17. Order for payment for damage, etc. to equipment, etc.**

A punishment imposed under rule 4A, 15 or 16 may include an order for the payment by the officer punished of the cost of replacing or repairing any article of clothing, equipment or other property with which he has been provided or entrusted by the Government and which has been lost or damaged due to the fault of the officer.

**18. Punishment where criminal offence is committed**

(1) The punishment of a subordinate officer who in criminal proceedings is found guilty of or pleads guilty to a criminal offence shall be in accordance with this rule.



(2) In the case of an inspector, the Commissioner shall as soon as practicable—

- (a) refer the case to the Chief Executive; and
- (b) notify the inspector that he has done so and that the inspector may make representations in writing to the Chief Executive in mitigation of punishment within 14 days of receiving such notice or within such further period as the Chief Executive may allow.

(3) In referring a case under subrule (2) the Commissioner shall send to the Chief Executive—

- (a) a copy of the record of the **criminal** proceedings;
- (b) the inspector's record of service; and
- (c) his recommendation with respect to punishment or otherwise.

(4) The Chief Executive may, after considering any representations made by the inspector, impose any one or more of the punishments which he may impose under rule 15(b) in respect of a disciplinary offence by an inspector.

(5) In the case of a customs officer, the Commissioner shall notify the officer that he may make representations in writing in mitigation of punishment within 14 days of receiving such notice and, after considering any such representations, may impose any one or more of the punishments he may impose under rule 16 in respect of a disciplinary offence by a customs officer.

#### **18A: Summary dismissal of subordinate officer for absence from duty**

Notwithstanding any other disciplinary provisions applicable to him under these rules, where a subordinate officer is absent from duty without leave for a period exceeding 21 days and it is reported to the Chief Executive in the case of an inspector or to the Commissioner in the case of a customs officer that—

- (a) the officer cannot be traced; or
- (b) on being required by notice in writing (sent to any address through which it may reasonably be expected to reach him) to give, within 14 days, an excuse for his absence, the officer has failed to give an excuse or to give an excuse that is acceptable to the Commissioner,

the Chief Executive or the Commissioner, as the case may be, may without further proceedings summarily dismiss the officer.

## **PART V**

### **REVIEWS AND APPEALS**

#### **19. Review**

- (1) Where a subordinate officer has been found guilty of a disciplinary

offence or has been punished under these rules by the Commissioner or another senior officer, the Commissioner may, of his own motion, within 14 days of the finding or the punishment (if it was imposed on a later day), review the finding or punishment or both, and within 14 days of the punishment he may review any punishment imposed following a plea of guilty to a disciplinary offence.

(2) Upon a review under this rule the Commissioner may, subject to rule 26, exercise any of the powers in rule 22(a), (b), (c) and (d) and rule 24(a) and (b).

## **20. Appeals**

(1) A subordinate officer (including one who has been dismissed) may appeal, in accordance with the following rules, against—

- (a) a finding by the Commissioner or other senior officer that he is guilty of a disciplinary offence;
- (b) any punishment imposed by the Commissioner or other senior officer, other than under rule 22.

(2) A customs officer may also appeal, in accordance with the following rules, against a punishment imposed on him by the Commissioner or other senior officer under rule 18(5).

## **21. To whom appeal lies**

(1) The appeal shall lie—

- (a) to the Chief Executive, in respect of a finding made or a punishment imposed by the Commissioner; and
- (b) to the Commissioner in all other cases.

(2) The Chief Executive may delegate to the Secretary for the Civil Service, or to a public officer not below the rank of Director of Bureau, the determination of an appeal referred to in subrule (1)(a).

## **22. Powers of the Chief Executive and Commissioner on appeal**

Upon an appeal, the Chief Executive or the Commissioner, as the case may be, may—

- (a) confirm or reverse the finding;
- (b) confirm the punishment;
- (c) subject to rule 26, substitute any other punishment which could have been imposed by him under rule 15 or 16;
- (d) remit the punishment in full or in part without substituting any other punishment;
- (e) if he dismisses an appeal against a finding and no punishment has been imposed, treat the appeal as if it were a case referred to him for punishment and impose any punishment or take any other action

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within his powers.

**23. Appeal to be made within 14 days**

An appeal shall be made in writing within 14 days from the day on which the subordinate officer is informed that he has been found guilty of a disciplinary offence or from any day on which punishment is imposed.

**24. Further evidence may be admitted**

For the purpose of any appeal against a finding, the Chief Executive may—

- (a) accept in whole or in part the record of the evidence already taken;
- (b) direct that the whole or any part of the evidence be taken again or that additional evidence be taken,

and the Commissioner may, where the appeal lies to him, do any of those things and may also himself take the evidence or part thereof again or take the additional evidence.

**25. Suspension of punishment pending appeal**

In the event of an appeal, any punishment (other than a severe reprimand or reprimand) imposed on a subordinate officer shall be suspended until the appeal is disposed of, withdrawn or abandoned

**26. Greater punishment not to be imposed without opportunity to make representations**

Neither the Chief Executive nor the Commissioner shall impose a greater punishment under rule 19(2) or 22 without first allowing the subordinate officer a reasonable opportunity to be heard or to make representations in writing as to why the punishment should not be increased.