

L.N. 58 of 2012

**Fire Services Ordinance (Amendment of Second
Schedule) Regulation 2012**

(Made by the Chief Executive in Council under section 26 of the
Fire Services Ordinance (Cap. 95))

1. Commencement

This Regulation comes into operation on a day to be appointed by the Secretary for the Civil Service by notice published in the Gazette.

2. Fire Services Ordinance amended

The Fire Services Ordinance (Cap. 95) is amended as set out in section 3.

3. Second Schedule amended

(1) Second Schedule—

Repeal Part I

Substitute

“Part I

**Rules for Investigation into Offences against
Discipline by Subordinate Officers and Members
of Other Ranks**

1. Interpretation of this Part

In this Part—

accused (被控人) 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).

2. Charge sheet

Every charge must be entered on a charge sheet.

3. Investigation of charge

Every charge is to be investigated by the Director by way of a hearing under this Part without delay.

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.

6. Procedures at hearing

- (1) The Director must read and explain to the accused any charge against the accused.
- (2) The prosecutor or any barrister or solicitor assisting the prosecutor may—
 - (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 must not be taken on oath or affirmation.
- (5) No documentary evidence may be used against the accused unless a copy of the documentary evidence, or access to the documentary evidence or a copy, has been given to the accused before the hearing.

7. Adding or amending charge

- (1) The prosecutor may amend a charge or add a new charge at any time before the Director communicates a finding to the accused.
- (2) The Director must read and explain any amended or new charge to the accused.
- (3) The accused is entitled to a reasonable adjournment to prepare a further defence.
- (4) The prosecutor and the accused—
 - (a) may recall any witness who has given evidence for the purpose of further examination, cross-examination or re-examination; and
 - (b) may call any further witness.

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.

10. Finding and punishment

- (1) At the conclusion of a hearing, the Director must—

- (a) if in the Director's opinion the evidence does not show that any offence against discipline has been committed, dismiss the charge;
- (b) if in the Director's opinion the evidence shows that an offence against discipline has been committed, either—
 - (i) award a punishment within 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.

11. Reference of case to Chief Executive

- (1) If the Director refers a case to the Chief Executive, the Director must forward to the Chief Executive—
 - (a) a copy of the charge sheet;
 - (b) a copy of the written record of proceedings made in respect of the case under rule 9(1) of this Part which has been certified by the Director to be a true copy of the original;
 - (c) a report setting out—
 - (i) the Director's reasons for considering the charge proved;
 - (ii) the Director's recommendation with respect to punishment or otherwise; and
 - (d) the accused's conduct sheet.
- (2) The Director must inform the accused by notice in writing that the accused may, within 14 days from the service of the notice, forward any further representations that the accused wishes to make to the Chief Executive in writing.

12. Procedure when case referred to Chief Executive

On reference to the Chief Executive of a case and after consideration of any representations made by the accused, the Chief Executive must—

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

13. Procedure where Director has delegated powers

- (1) If the Director has authorized under section 6(2) 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 is to be regarded as a reference to that other person; and
 - (b) a reference in those rules to the Chief Executive is to be regarded as a reference to the Director.
- (2) A case referred to the Director by another 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 rule 11 of this Part.”.

(2) Second Schedule, Part II, rule 2(a)—

Repeal

“proceedings”

Substitute

“criminal proceedings”.

Manda CHAN
Clerk to the Executive Council

COUNCIL CHAMBER

17 April 2012

Explanatory Note

This Regulation amends the Second Schedule to the Fire Services Ordinance (Cap. 95). The main purposes of the amendments are set out below.

2. New rule 4 of Part I of the Second Schedule (*relevant part*) requires the Director of Fire Services (*Director*) to appoint a prosecutor for the disciplinary proceedings against a member of the Fire Services Department other than a senior officer.
3. Under new rules 5 and 6 of the relevant part, a member of the Fire Services Department (other than a senior officer) who is charged with an offence against discipline (*accused*) may choose to be represented at the hearing of the charge by a barrister or solicitor if the Director so approves, or by another person approved by the Director. The accused is still required to attend the hearing in person. If the accused is legally represented at the hearing, the Director and the prosecutor may separately be assisted by a barrister or solicitor at the hearing.
4. New rule 8 of the relevant part states that the Director may proceed with any proceedings in the absence of the accused, if the accused is required to appear in person in those proceedings but, without reasonable excuse, fails to appear repeatedly.
5. New rule 9 of the relevant part provides that the Director must make a written record of the proceedings of a hearing, and may make an audio recording or audio and visual recording of those proceedings.