
L.N. 59 of 2012

Police (Discipline) (Amendment) Regulation 2012

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Police (Discipline) (Amendment) Regulation 2012

(Made by the Chief Executive in Council under section 45 of the Police Force Ordinance (Cap. 232))

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. Police (Discipline) Regulations amended

The Police (Discipline) Regulations (Cap. 232 sub. leg. A) are amended as set out in sections 3 to 45.

3. Regulation 2 amended (interpretation)

(1) Regulation 2, Chinese text, definition of **警隊紀律主任**—

Repeal the full stop

Substitute a semicolon.

(2) Regulation 2—

Add in alphabetical order

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

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);

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 regulation 10A(1) or 22A(1);

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

4. Regulation 3 amended (disciplinary offences)

(1) Regulation 3(1)(b), Chinese text—

Repeal

“犯罪”

Substitute

“控罪成立”.

(2) Regulation 3(2)(m)—

Repeal

“calculated”

Substitute

“likely”.

5. Regulation 3A amended (interpretation in this Part)

Regulation 3A, Chinese text, definition of 受委人員—

Repeal

“紀律”.

6. Regulation 3B amended (minor offences)

Regulation 3B(2), Chinese text—

Repeal

“紀律”.

7. Regulation 3C amended (procedure for minor offences)

(1) Regulation 3C(1), after “appointed officer”—

Add

“in person”.

(2) Regulation 3C—

Repeal paragraph (5).

8. Regulation 4 substituted

Regulation 4—

Repeal the regulation

Substitute

“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 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.”.

9. Regulation 5 substituted

Regulation 5—

Repeal the regulation

Substitute

“5. Preliminary procedure

- (1) If it appears to a police officer of or above the rank of sergeant that a disciplinary charge should be laid against a junior police officer subordinate to him or her in rank, the appropriate charge intended to be laid against the junior police officer must be entered in the Defaulter Report, and the junior police officer must be informed of the intended charge 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.

-
- (3) The junior police officer must be served with a notice in writing specifying—
- (a) the charge;
 - (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;
 - (d) the place of the hearing; and
 - (e) the time and date of the hearing, which must not be earlier than 7 clear days after service of the notice.”.

10. Regulation 6 substituted

Regulation 6—

Repeal the regulation

Substitute

“6. Objection to tribunal

- (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.”.

11. Regulation 7 substituted

Regulation 7—

Repeal the regulation

Substitute

“7. 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.”.

12. Regulation 7A added

After regulation 7—

Add

“7A. Appointment of prosecutor

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

13. Regulation 7B added

Before regulation 8—

Add

“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.”.

14. Regulation 8 substituted

Regulation 8—

Repeal the regulation

Substitute

“8. Plea of defaulter

- (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.”.

15. Regulation 9 substituted

Regulation 9—

Repeal the regulation

Substitute

“9. Procedure at hearing

- (1) If a defaulter pleads not guilty at a hearing and evidence for the prosecution is called, witnesses are to be called in support of the charge and, at the conclusion of the evidence of each of those witnesses, the defaulter or the defence representative may cross-examine that witness, who may then be re-examined.
- (2) When the examination of all witnesses in support of the charge 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 wishes to—
 - (a) give evidence; and
 - (b) call witnesses.
- (4) If the defaulter gives evidence, the defaulter may be cross-examined and re-examined, and any witness called by the defaulter may be examined, cross-examined and re-examined.
- (5) At the close of the defence case, witnesses may be called with the consent of the appropriate tribunal to give evidence in rebuttal, and may be examined, cross-examined and re-examined.

- (6) At the conclusion of all the evidence, the prosecutor or any barrister or solicitor assisting the prosecutor may address the appropriate tribunal and then the defaulter or the defence representative may address the appropriate tribunal in reply.
- (7) The appropriate tribunal may—
 - (a) call witnesses; and
 - (b) ask any witness any question, that it considers 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.
- (10) The appropriate tribunal may adjourn the hearing from time to time, and if an application is made for an adjournment, the applicant must show to the satisfaction of the appropriate tribunal that the adjournment would serve the ends of justice.
- (11) An adjournment granted under paragraph (10) must be for a reasonable period only.”.

16. Regulation 10 substituted

Regulation 10—

Repeal the regulation

Substitute

“10. Adding or amending charge

- (1) The prosecutor may amend a charge or add a further charge at any time before the appropriate tribunal communicates a finding to the defaulter.

- (2) The appropriate tribunal must read and explain any amended or new charge to the defaulter.
- (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) is entitled to a reasonable adjournment to prepare a further defence;
 - (b) may recall any witness; and
 - (c) may call any further witness as he or she thinks fit.
- (4) A witness giving evidence under this regulation may be cross-examined and re-examined.”.

17. Regulation 10A added

After regulation 10—

Add

“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.”.

18. Regulation 11 substituted

Regulation 11—

Repeal the regulation

Substitute

“11. Finding by appropriate tribunal

- (1) The appropriate tribunal may at the conclusion of the hearing announce its finding on a charge or reserve its finding, and if the finding is reserved, the appropriate tribunal must call the defaulter to appear in person before it when it announces its finding.
- (2) The appropriate tribunal must endorse the finding on the Defaulter Report.
- (3) If the defaulter has pleaded guilty or is found guilty, the appropriate tribunal must ask if the defaulter wishes to make or produce to the appropriate tribunal a statement which contains any relevant matters that the defaulter wishes to be taken into consideration by the appropriate tribunal.”.

19. Regulations 11A and 11B added

After regulation 11—

Add

“11A. Award by single member tribunal

- (1) If the appropriate tribunal consists of a single police officer (*single member tribunal*) and the defaulter has pleaded guilty or is found guilty, the single member tribunal may then announce its award or reserve its award, and if the award is reserved, the single member tribunal must call the defaulter to appear in person before it 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 single member tribunal considers that no punishment should be awarded, it must—
 - (a) endorse the Defaulter Report to that effect;
 - (b) send the Defaulter Report to the Force Discipline Officer; and
 - (c) inform the defaulter of the acts mentioned in subparagraphs (a) and (b).
- (5) If the defaulter has pleaded guilty or is found guilty and the single member tribunal considers that the punishment it can award is insufficient, it must not make an award, and it must—
 - (a) endorse the Defaulter Report to that effect;
 - (b) send the Defaulter Report to the Force Discipline Officer; and
 - (c) inform the defaulter of the acts mentioned in subparagraphs (a) and (b).

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.”.

20. Regulation 12 substituted

Regulation 12—

Repeal the regulation

Substitute

“12. Review

- (1) The appropriate tribunal hearing a case may, at any time within 7 days after having announced its finding or award to the defaulter, review the case and arrive at a fresh finding or award which, subject to paragraph (3), is to be substituted for the original finding or award.
- (2) If the appropriate tribunal reviews a case, it must announce before the defaulter or communicate in writing to the defaulter its finding or award after the review.
- (3) The appropriate tribunal must 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 representations 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.
- (5) A review under this regulation is at the sole discretion of the appropriate tribunal 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.”.

21. Regulation 12A added

After regulation 12—

Add

“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.”.

22. Regulation 13 substituted

Regulation 13—

Repeal the regulation

Substitute

“13. Punishment of junior police officers

(1) 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 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;

(e) forfeiture of not more than 1 month’s pay except in the case of absence without good cause when forfeiture of pay extends to the period of absence in addition to any other punishment awarded;

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- (f) reduction in rank;
 - (g) an order to resign immediately without salary in lieu of notice;
 - (h) compulsory retirement with full retirement benefits or reduced retirement benefits or without retirement benefits;
 - (i) dismissal without retirement benefits.
- (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.
- (3) 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 the junior police officer to retire in the public interest.
- (4) Despite this regulation, a junior police officer who—
- (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,
- must, if he or she is a station sergeant or sergeant, be reduced to the ranks before the dismissal.

- (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 immediately from the police force,
- must, if he or she fails to comply with the order, be dismissed without retirement benefits.”.

23. Regulation 14 substituted

Regulation 14—

Repeal the regulation

Substitute

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

- (1) Within 14 days from the receipt of a Default Report by the Force Discipline Officer under regulation 11A(3), (4)(b) or (5)(b), 11B or 12(4)(b), the Force Discipline Officer must—
- (a) in respect of the finding—
 - (i) confirm the finding;
 - (ii) vary the finding and substitute any finding which the appropriate tribunal could have made on the evidence adduced; or
 - (iii) subject to paragraph (2)(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, if the Force Discipline Officer confirms or varies the finding—
 - (i) if no punishment was awarded, award a punishment that the Force Discipline Officer is empowered to award;
 - (ii) confirm the award;
 - (iii) remit the award; or
 - (iv) subject to paragraph (2)(a) and (b), substitute any other award that the Force Discipline Officer is empowered to award.
 - (2) The Force Discipline Officer must not—
 - (a) substitute for any punishment awarded any greater punishment unless the defaulter is given an opportunity of making representations to the Force Discipline Officer as to why the original punishment should not be increased;
 - (b) substitute for a finding of not guilty a finding of guilty; or
 - (c) order a rehearing if the finding, as confirmed or varied, is one of not guilty.
 - (3) The Force Discipline Officer acting under this regulation must announce before the defaulter or communicate in writing to the defaulter the action taken by the Force Discipline Officer.”.

24. Regulation 15 substituted

Regulation 15—

Repeal the regulation

Substitute

“15. Appeals by junior police officers

- (1) A junior police officer may within 14 days from the announcement to him or her by, or the receipt of a communication from, the Force Discipline Officer of a finding, decision or award, appeal in writing to the Commissioner by petition, which may contain any representations relevant to the appeal.
- (2) On an appeal under this regulation, the Commissioner may—
 - (a) vary any finding and substitute any finding which the Commissioner could have made on the evidence adduced;
 - (b) remit any award;
 - (c) order a rehearing of the case on the same or other charges by another appropriate tribunal;
 - (d) substitute any other award that 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) On an appeal under this regulation, the Commissioner—
 - (a) may permit the defaulter to appear before the Commissioner in person to support the appeal;
 - (b) may hear any additional evidence that the Commissioner considers relevant; and

- (c) must announce before the defaulter or communicate in writing to the defaulter the outcome of the appeal or the action taken under this regulation.
- (4) If an appeal is lodged under this regulation, any punishment awarded (other than a caution, reprimand or severe reprimand) must be suspended pending the determination of the appeal.”.

25. Regulation 16 substituted

Regulation 16—

Repeal the regulation

Substitute

“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 board appointed by the Commissioner; or
 - (c) a board appointed by the Secretary for the Civil Service.
- (2) If the appropriate tribunal is to be a board appointed by the Commissioner, the Commissioner must appoint a board consisting of 2 police officers of or above the rank of superintendent, and name one of them 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, 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 not below the rank of superintendent appointed by the Commissioner or by a senior police officer.
- (4) On an application under paragraph (3), if the Commissioner is of the opinion that there are exceptional circumstances in the case, the Commissioner must request the Secretary for the Civil Service to appoint a board to be the appropriate tribunal.
- (5) 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 must refer the request to the Secretary for the Civil Service to appoint a board to be the appropriate tribunal.
- (6) In exercising the discretion whether or not to appoint a board to be the appropriate tribunal, the Secretary for the Civil Service must take into account any representations made in writing by the Commissioner and the defaulter.
- (7) If the appropriate tribunal is to be a board appointed by the Secretary for the Civil Service, the Secretary for the Civil Service must appoint a board consisting of 3 public officers, and name one of them as the President of the board.
- (8) 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.”.

26. Regulation 17 substituted

Regulation 17—

Repeal the regulation

Substitute

“17. Preliminary procedure

- (1) If it appears to a senior police officer that a disciplinary charge 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 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.
- (3) The inspector must be served with a notice in writing specifying—
 - (a) the charge;
 - (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;
 - (d) the place of the hearing; and
 - (e) the time and date of the hearing, which must not be earlier than 7 clear days after service of the notice.”.

27. Regulation 18 substituted

Regulation 18—

Repeal the regulation

Substitute

“18. Objection to tribunal

- (1) If a defaulter objects to an appropriate tribunal on the grounds of partiality or bias, the defaulter may, within 7 days 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 the Commissioner or by a senior police officer or to change a member of the board appointed by the Commissioner; or
 - (c) to request the Secretary for the Civil Service to appoint a board to be the appropriate tribunal.
- (2) The Commissioner may, on receiving an application made under paragraph (1)(a) or (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.
- (3) If the defaulter has made an application under paragraph (1)(c), the Commissioner must refer the request to the Secretary for the Civil Service 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.”.

28. Regulations 18A and 18B added

After regulation 18—

Add

“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.”.

29. Regulation 18C added

After regulation 18B—

Add

“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.”.

30. Regulation 19 repealed (procedure)

Regulation 19—

Repeal the regulation.

31. Regulation 20 substituted

Regulation 20—

Repeal the regulation

Substitute

“20. Plea of defaulter

- (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.”.

32. Regulation 21 substituted

Regulation 21—

Repeal the regulation

Substitute

“21. Procedure at hearing

- (1) If a defaulter pleads not guilty at a hearing and evidence for the prosecution is called, witnesses are to be called in support of the charge and, at the conclusion of the evidence of each of those witnesses, the defaulter or the defence representative may cross-examine that witness, who may then be re-examined.
- (2) When the examination of all witnesses in support of the charge 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 wishes to—
 - (a) give evidence; and
 - (b) call witnesses.
- (4) If the defaulter gives evidence, the defaulter may be cross-examined and re-examined, and any witness called by the defaulter may be examined, cross-examined and re-examined.
- (5) At the close of the defence case, witnesses may be called with the consent of the appropriate tribunal to give evidence in rebuttal, and may be examined, cross-examined and re-examined.

- (6) At the conclusion of all the evidence, the prosecutor or any barrister or solicitor assisting the prosecutor may address the appropriate tribunal and then the defaulter or the defence representative may address the appropriate tribunal in reply.
- (7) The appropriate tribunal may—
 - (a) call witnesses; and
 - (b) ask any witness any question, that it considers 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.
- (10) The appropriate tribunal may adjourn the hearing from time to time, and if an application is made for an adjournment, the applicant must show to the satisfaction of the appropriate tribunal that the adjournment would serve the ends of justice.
- (11) An adjournment granted under paragraph (10) must be for a reasonable period only.”.

33. Regulation 22 substituted

Regulation 22—

Repeal the regulation

Substitute

“22. Adding or amending charge

- (1) The prosecutor may amend a charge or add a further charge at any time before the appropriate tribunal communicates a finding to the defaulter.

- (2) The appropriate tribunal must read and explain any amended or new charge to the defaulter.
- (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) is entitled to a reasonable adjournment to prepare a further defence;
 - (b) may recall any witness; and
 - (c) may call any further witness as he or she thinks fit.
- (4) A witness giving evidence under this regulation may be cross-examined and re-examined.”.

34. Regulation 22A added

After regulation 22—

Add

“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.”.

35. Regulation 23 substituted

Regulation 23—

Repeal the regulation

Substitute

“23. Finding by appropriate tribunal

- (1) The appropriate tribunal may at the conclusion of the hearing announce its finding on a charge or reserve its finding, and if the finding is reserved, the appropriate tribunal must call the defaulter to appear in person before it when it announces its finding.
- (2) The appropriate tribunal must endorse the finding on the Defaulter Report.
- (3) If the defaulter has pleaded guilty or is found guilty, the appropriate tribunal must ask if the defaulter wishes to make or produce to the appropriate tribunal a statement which contains any relevant matters that the defaulter wishes to be taken into consideration by the appropriate tribunal.”.

36. Regulations 23A, 23B and 23C added

After regulation 23—

Add

“23A. Award by single member tribunal

- (1) If the appropriate tribunal consists of a single police officer (*single member tribunal*) and the defaulter has pleaded guilty or is found guilty, the single member tribunal may then announce its award or reserve its award, and if the award is reserved, the single member tribunal must call the defaulter to appear in person before it when it announces its award.
- (2) The single member tribunal must endorse the award on the Defaulter Report.
- (3) If the defaulter has pleaded guilty or is found guilty and the single member tribunal considers that no punishment should be awarded, it must—

- (a) endorse the Defaulter Report to that effect; and
 - (b) inform the defaulter of the endorsement.
- (4) If the defaulter has pleaded guilty or is found guilty and the single member tribunal considers that the punishment it can award is insufficient, it must not make an award, and it must—
- (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).

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

- (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).”.

37. Regulation 24 substituted

Regulation 24—

Repeal the regulation

Substitute

“24. Review

- (1) The appropriate tribunal hearing a case may, at any time within 7 days after having announced its finding or award to the defaulter, review the case and arrive at a fresh finding or award which, subject to paragraph (3), is to be substituted for the original finding or award.
- (2) If the appropriate tribunal reviews a case, it must announce before the defaulter or communicate in writing to the defaulter its finding or award after the review.
- (3) The appropriate tribunal must 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 representations 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.

- (5) A review under this regulation is at the sole discretion of the appropriate tribunal 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.”.

38. Regulation 24A added

After regulation 24—

Add

“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.”.

39. Regulation 25 substituted

Regulation 25—

Repeal the regulation

Substitute

“25. Punishment of inspectors

- (1) 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 may, subject to regulation 30, be punished by the appropriate tribunal with—
- (a) caution; or
 - (b) reprimand.

-
- (2) In place of or in addition to a punishment 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;
 - (b) in the case of a senior inspector, reversion in rank to inspector;
 - (c) severe reprimand;
 - (d) deferment or stoppage of increment; or
 - (e) forfeiture of not more than 1 month's pay except in the case of absence without good cause when forfeiture of pay extends to the period of absence in addition to any other punishment awarded.
- (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).”.

40. Regulation 26 substituted

Regulation 26—

Repeal the regulation

Substitute

“26. Appeals by inspectors

- (1) An inspector may within 14 days from the announcement to him or her by, or the receipt of a communication from, the Commissioner or an appropriate tribunal of a finding or award—
- (a) (if the appropriate tribunal was a board appointed by the Commissioner or by the Secretary for the Civil Service) appeal in writing to the Chief Executive by petition, which may contain any representations relevant to the appeal; or

-
- (b) (in any other case) appeal in writing to the Commissioner by petition, which may contain any representations relevant to the appeal.
- (2) An inspector who has appealed to the Commissioner under paragraph (1)(b) and—
- (a) has been awarded a punishment by the Commissioner under regulation 25(2) or (3); or
- (b) is aggrieved by any other decision made by the Commissioner,
- may, within 14 days from the receipt of communication of the award or decision, appeal in writing to the Chief Executive by petition, which may contain any representations relevant to the appeal.
- (3) On an appeal under paragraph (1) or (2), the Chief Executive may—
- (a) set aside a finding if in all the circumstances of the case the Chief Executive considers justice so requires and either—
- (i) award a punishment warranted by any finding which has not been set aside; or
- (ii) award no punishment if 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 on an appeal under paragraph (1) or (2) or on a reference under regulation 27 must be communicated to the Commissioner and to the inspector by the Chief Executive's Office.
- (5) The Commissioner may, on an appeal under paragraph (1) or of the Commissioner's own motion—
 - (a) confirm a finding of guilty or substitute a finding of not guilty;
 - (b) confirm or remit an award;
 - (c) substitute any other award that the Commissioner could have awarded under regulation 25, except that no greater punishment may be awarded unless the inspector is given an opportunity of making representations as to why the original punishment should not be increased;
 - (d) forward the Defaulter Report to the Chief Executive under regulation 27; or
 - (e) order a rehearing of the case on the same or other charges by another appropriate tribunal.
- (6) If an appeal is lodged under this regulation, any punishment awarded (other than a caution, reprimand or severe reprimand) must be suspended pending the determination of the appeal.”.

41. Regulation 27 amended (Commissioner may report to Chief Executive)

- (1) Regulation 27—

Repeal paragraphs (1) and (2)

Substitute

- “(1) If an inspector has pleaded guilty to or is found guilty of 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 must forward to the Chief Executive the Defaulter Report together with—

- (a) the record of the inspector's service;
- (b) the Commissioner's recommendation; and
- (c) the Commissioner's reasons for not making an award under regulation 25(2) or (3).

(2) The Commissioner must at the same time as 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 from the receipt of the information, or within any extended period of time that the Chief Executive may allow, forward to the Chief Executive a petition in writing, containing any representations which may be relevant to enable the Chief Executive to exercise a discretion under paragraph (3).”.

(2) Regulation 27(3)(d), Chinese text—

Repeal

“其他處分”

Substitute

“進一步”.

42. Regulation 28 amended (power to suspend punishment)

Regulation 28—

Repeal paragraph (3)

Substitute

- “(3) On a review under paragraph (2), the appropriate tribunal or officer of higher rank may—
- (a) remit or reduce the punishment; or
 - (b) order the punishment to be executed immediately.
- (3A) 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.
- (3B) If, during the period of suspension of a punishment under this regulation, the defaulter is convicted of another disciplinary offence committed after the disciplinary offence for which the suspended punishment was awarded, the suspended punishment must be executed immediately and any punishment on that other disciplinary offence must not be suspended.”.

43. Regulation 29 amended (payment for loss or damage to property)

- (1) Regulation 29—

Repeal paragraph (1)

Substitute

- “(1) 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, the appropriate tribunal may, in addition to or in lieu of any punishment 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 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 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,

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 1 month.”.

- (2) Regulation 29—

Repeal paragraph (3)

Substitute

- “(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 the police officer due opportunity to make representations and enabling a requirement under that paragraph to be appealed against and reviewed, Parts II and III apply, with the necessary modifications, to and in respect of that requirement as they apply to and in respect of a finding of guilty of a disciplinary offence and an award of punishment for the offence.”.

44. Regulation 33 added

At the end of Part IV—

Add

“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 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. 59 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.”.

45. Schedule amended (powers of punishment)

- (1) The Schedule, English text, entry relating to Superintendent, column (2), paragraph 1(d)—

Repeal

“shall extend”

Substitute

“extends”.

- (2) The Schedule, entry relating to Senior Police Officer and (in the case of Junior Police Officers only) Force Discipline Officer, column (2), after paragraph 1(c)—

Add

“(ca) Deferment or stoppage of increment;”.

- (3) The Schedule, English text, entry relating to Senior Police Officer and (in the case of Junior Police Officers only) Force Discipline Officer, column (2), paragraph 1(d)—

Repeal

“shall extend”

Substitute

“extends”.

- (4) The Schedule, Chinese text, entry relating to Senior Police Officer and (in the case of Junior Police Officers only) Force Discipline Officer, column (2), paragraph 4(a)—

Repeal

“降至革職前的職級”

Substitute

“於革職前被降級”.

- (5) The Schedule, English text, entry relating to Senior Police Officer and (in the case of Junior Police Officers only) Force Discipline Officer, column (2), paragraph 4(b)—

Repeal

“forthwith”

Substitute

“immediately”.

- (6) The Schedule, entry relating to Senior Police Officer and (in the case of Junior Police Officers only) Force Discipline Officer, column (2), Note—

Repeal

“13(3A)”

Substitute

“13(3) by the Force Discipline Officer”.

- (7) The Schedule, entry relating to Commissioner of Police, column (2), after paragraph 1(c)—

Add

“(ca) Deferment or stoppage of increment;”.

- (8) The Schedule, English text, entry relating to Commissioner of Police, column (2), paragraph 1(d)—

Repeal

“shall extend”

Substitute

“extends”.

- (9) The Schedule, entry relating to Commissioner of Police, column (2), paragraph 4(a), after “station sergeant”—

Add

“or sergeant”.

- (10) The Schedule, English text, entry relating to Commissioner of Police, column (2), paragraph 4(b)—

Repeal

“forthwith”

Substitute

“immediately”.

- (11) The Schedule, entry relating to Commissioner of Police, column (2), Note—

Repeal

“13(3A)”

Substitute

“15(2)(e)”.

- (12) The Schedule, entry relating to Commissioner of Police, column (3)—

Repeal paragraph 1

Substitute

- “1. (a) Caution; or
(b) Reprimand.”.

- (13) The Schedule, entry relating to Commissioner of Police, column (3), after paragraph 4(b)—

Add

- “(ba) severe reprimand;”.

- (14) The Schedule, English text, entry relating to Commissioner of Police, column (3), paragraph 4(d)—

Repeal

- “shall extend”

Substitute

- “extends”.

Manda CHAN
Clerk to the Executive Council

COUNCIL CHAMBER

17 April 2012

Explanatory Note

This Regulation amends the Police (Discipline) Regulations (Cap. 232 sub. leg. A) (*principal regulations*). The main purposes of the amendments are set out below.

2. Section 4(2) amends regulation 3(2)(m) of the principal regulations to avoid doubt concerning an existing disciplinary offence.
3. Section 7 amends regulation 3C of the principal regulations to remove the prohibition of representation of a junior police officer or an inspector by another person in proceedings against him or her in respect of a minor disciplinary offence.
4. With the addition of new regulations 7B and 18C to the principal regulations (sections 13 and 29) and the substitution of new regulations 9 and 21 of the principal regulations (sections 15 and 32), a junior police officer or an inspector charged with a disciplinary offence (*defaulter*) may choose to be represented at the hearing of the charge by a barrister or solicitor if the Commissioner of Police (*Commissioner*) so approves, or by another person approved by the Commissioner. The defaulter is still required to attend the hearing in person. If the defaulter is legally represented at the hearing, the tribunal and the prosecutor may separately be assisted by a barrister or solicitor at the hearing.
5. Sections 17 and 34 add new regulations 10A and 22A to the principal regulations under which the tribunal 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.

6. Sections 21 and 38 add new regulations 12A and 24A to the principal regulations to state that the tribunal may proceed with any proceedings in the absence of the defaulter, if the defaulter is required to appear in person in those proceedings but, without reasonable excuse, fails to appear repeatedly.
7. Section 24 substitutes regulation 15 of the principal regulations so that on an appeal from a junior police officer, the Commissioner may require him or her to retire in the public interest.
8. Section 40 substitutes regulation 26 of the principal regulations which, among other things, provides that on an appeal from an inspector, the Chief Executive may order a rehearing by another tribunal.
9. This Regulation transfers the power to appoint a board to be a tribunal from the Chief Secretary for Administration to the Secretary for the Civil Service (sections 25, 27, 36 and 40).
10. This Regulation transfers from the Chief Secretary for Administration to the Chief Executive's Office the function to communicate the Chief Executive's decision on an appeal made by an inspector (section 40).
11. This Regulation aligns certain arrangements and procedures of disciplinary proceedings for junior police officers under Part II of the principal regulations with those for inspectors under Part III of the principal regulations so that—
 - (a) the tribunal hearing a charge against a defaulter may be a board (sections 8, 9, 10, 19, 25, 26, 27 and 36);
 - (b) the Commissioner is required to appoint a prosecutor for the disciplinary proceedings against a defaulter (sections 12 and 28);

- (c) the procedures for providing access to records and documents, taking plea, hearing of charges, adding or amending charges and finding by the tribunal are the same for junior police officers and inspectors (sections 11, 14, 15, 16, 18, 28, 31, 32, 33 and 35);
- (d) the prosecutor may request the tribunal to review its finding or award, and the tribunal may communicate the result of the review to the defaulter either in person or in writing (sections 20 and 37);
- (e) the role of a senior police officer is removed from the disciplinary proceedings after the tribunal has completed the hearing of a charge against a junior police officer (sections 19, 22 and 23);
- (f) the punishment of “deferment or stoppage of increment” may also be awarded in respect of a junior police officer (sections 22 and 45(2) and (7));
- (g) the Commissioner may remit any punishment awarded in respect of a defaulter on an appeal to the Commissioner (sections 24 and 40).