

L.N. 60 of 2012

Prison (Amendment) Rules 2012

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Prison (Amendment) Rules 2012

(Made by the Chief Executive in Council under section 25 of the Prisons Ordinance (Cap. 234))

1. Commencement

These Rules come into operation on a day to be appointed by the Secretary for the Civil Service by notice published in the Gazette.

2. Prison Rules amended

The Prison Rules (Cap. 234 sub. leg. A) are amended as set out in rules 3 to 17.

3. Rule 238A added

Part V, immediately before rule 239—

Add

“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).”.

4. Rule 239 amended (offences)

Rule 239(2)(f), English text—

Repeal

“paragraphs”

Substitute

“subparagraphs”.

5. Rule 243 amended (procedure as to charges)

(1) Rule 243(1)—

Repeal

“any Chief Officer or subordinate officer or other person employed in the prisons in respect of any disciplinary offence enumerated in rule 239 shall”

Substitute

“an accused must”.

(2) Rule 243—

Repeal paragraph (2)

Substitute

“(2) The disciplinary offence alleged must be specifically stated in the charge sheet which must also contain the particulars that leave the accused under no misapprehension as to the charge.”.

(3) Rule 243(3)(a)—

Repeal

“shall be handed to such officer or person”

Substitute

“must be served on the accused”.

(4) Rule 243(3)—

Repeal subparagraph (b).

(5) Rule 243(3), English text—

Repeal subparagraph (c)

Substitute

“(c) The accused must be allowed a reasonable opportunity to make copies of all documents for the purposes of the defence, and must, if the accused so requests, be given copies of them.”.

6. Rule 243A added

After rule 243—

Add

“243A. Appointment of prosecutor

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

7. Rule 244 substituted

Rule 244—

Repeal the rule

Substitute

“244. Duty to make reply

(1) The accused must, as soon as possible, and in any case not later than 24 hours after receipt of the charge sheet—

- (a) state in writing on the charge sheet his or her reply to the charge;
- (b) set out on a list the names of the witnesses the accused wishes to call; and

- (c) return the charge sheet to a senior officer specified for the purpose of this rule on the charge sheet.
- (2) The senior officer must transmit the charge sheet, list of witnesses and all written statements to the prosecutor.”.

8. Rule 245 substituted

Rule 245—

Repeal the rule

Substitute

“245. Power of Superintendent to hear charges

- (1) Paragraph (2) or (3) applies 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 within his or her competence, and that, if it is admitted or found proved, the Superintendent’s powers of punishment are sufficient.
- (2) If the accused admits the charge, the Superintendent must, after hearing—
 - (a) the accused or the defence representative;
 - (b) any witness 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 the accused, or make a disciplinary award within the Superintendent’s powers.
- (3) If the accused denies the charge, the Superintendent must, at the earliest possible moment, arrange for the attendance of all necessary witnesses and must, after hearing—
 - (a) all the evidence; and

- (b) any explanation given by the accused or the defence representative,
- either dismiss the charge or, if the Superintendent finds the charge proved, administer a caution or make a disciplinary award within the Superintendent's powers.
- (4) If the Superintendent, after hearing all of the evidence on a charge, comes to the conclusion that the charge is proved but that the case should be referred to the Commissioner, the Superintendent must so refer the case and immediately inform the accused accordingly.
- (5) If the accused is informed by the Superintendent that the case has been referred to the Commissioner under paragraph (4), the accused may, within 14 days after being so informed or within any further period that the Commissioner may allow, make representations in writing to the Commissioner.
- (6) 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, the Superintendent must refer the case to the Commissioner and must so inform the accused.
- (7) The Commissioner may either deal with the case in person or direct the Deputy Commissioner to hear the charge and must so inform the accused.”.

9. Rule 245A added

After rule 245—

Add

“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.”.

10. Rule 246 substituted

Rule 246—

Repeal the rule

Substitute

“246. Procedure at hearing

- (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.”.

11. Rules 246A and 246B added

After rule 246—

Add

“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.”.

12. Rule 248 substituted

Rule 248—

Repeal the rule**Substitute****“248. Power of Deputy Commissioner to make disciplinary awards**

If the Deputy Commissioner hears any charge which has been referred to him or her by the Commissioner under rule 245(7), the Deputy Commissioner must, after hearing all of the evidence and the explanation, if any, of the accused, either dismiss the charge or, if the charge is found proved—

- (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) if the charge is an offence against rule 239(1)(k)(i), forfeiture of pay (excluding allowances) for a period not exceeding 1 month or the period of absence, whichever is greater;
 - (iv) a fine not exceeding 1 month’s salary (excluding allowances);
 - (v) severe reprimand;
 - (vi) reprimand;
 - (vii) extra duties.”.

13. Rule 249 substituted

Rule 249—

Repeal the rule**Substitute**

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

The Commissioner must, on consideration of a case referred to him or her under rule 245(4) or on hearing a case under rule 245(7)—

- (a) if in the Commissioner’s opinion the evidence does not show that a disciplinary offence has been committed, dismiss the charge;
- (b) if in the Commissioner’s opinion the evidence shows that a disciplinary offence has been committed, either—
 - (i) award a punishment within the Commissioner’s powers; or
 - (ii) refer the case to the Chief Executive.”.

14. Rule 250 substituted

Rule 250—

Repeal the rule

Substitute

“250. Reference of case to Chief Executive

- (1) If the Commissioner refers a case to the Chief Executive, the Commissioner 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 246B(1) certified by the Commissioner to be a true copy of the original;
 - (c) the accused’s record of service; and
 - (d) a report setting out—

-
- (i) the Commissioner's reasons for considering the charge proved; and
 - (ii) the Commissioner's recommendation with respect to punishment or otherwise.
- (2) The Commissioner must inform the accused of the reference.
- (3) The accused may make representations in writing to the Chief Executive within 14 days after being informed of the reference under paragraph (2) or any further period that the Chief Executive may allow.”.

15. Rule 251 substituted

Rule 251—

Repeal the rule

Substitute

“251. 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 Commissioner, 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.”.

16. Rule 253 substituted

Rule 253—

Repeal the rule

Substitute

“253. Procedure where Commissioner has delegated powers

(1) If the Commissioner has authorized under section 24(2) of the Ordinance another person to exercise or perform the Commissioner’s powers, functions or duties under rules 249, 250 and 251—

(a) a reference in those rules to the Commissioner 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 Commissioner.

(2) A case referred to the Commissioner by another person under rule 249(b)(ii) as modified by paragraph (1) may be referred to the Chief Executive by the Commissioner in accordance with rule 250.”.

17. Rule 255B amended (punishment where criminal offence is committed)

(1) Rule 255B(2)(b), Chinese text—

Repeal

“期限”

Substitute

“期間”.

(2) Rule 255B(3)(a)—

Repeal

“proceedings”

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Rule 17

B2679

Substitute

“criminal proceedings”.

Manda CHAN
Clerk to the Executive Council

COUNCIL CHAMBER

17 April 2012

Explanatory Note

These Rules amend the Prison Rules (Cap. 234 sub. leg. A) (*principal rules*). The main purposes of the amendments are set out below.

2. Rule 5(4) repeals rule 243(3)(b) of the principal rules to dispense with certain minor procedural requirements concerning written statements.
3. Rule 6 adds a new rule 243A to the principal rules to require the Commissioner of Correctional Services of Hong Kong (*Commissioner*) to appoint a prosecutor for the disciplinary proceedings against officers of the Correctional Services Department to whom Part V of the principal rules apply.
4. With the addition of new rule 245A to the principal rules (rule 9) and the substitution of new rule 246 of the principal rules (rule 10), a person charged with a disciplinary offence (*accused*) may choose to be represented at the hearing of the charge by a barrister or solicitor if the Commissioner so approves, or by another person approved by the Commissioner. The accused is still required to attend the hearing in person. If the accused is legally represented at the hearing, the person hearing the charge and the prosecutor may separately be assisted by a barrister or solicitor at the hearing.
5. Rule 11 adds a new rule 246A to the principal rules to state that the person hearing a disciplinary charge 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.

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Explanatory Note
Paragraph 6

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6. Rule 11 also adds a new rule 246B to the principal rules under which the person hearing a disciplinary charge must make a written record of the proceedings of the hearing, and may make an audio recording or audio and visual recording of those proceedings.