
L.N. 62 of 2012

Traffic Wardens (Discipline) (Amendment) Regulation 2012

Contents

Section	Page
1. Commencement	B2711
2. Traffic Wardens (Discipline) Regulations amended.....	B2711
3. Regulation 2 amended (interpretation)	B2711
4. Regulation 3 amended (disciplinary offences).....	B2713
5. Regulations 5A and 5B added	B2713
5A. Appointment of prosecutor.....	B2713
5B. Representation of defaulter at hearing.....	B2715
6. Regulation 6 substituted	B2715
6. Access to records and documents.....	B2715
7. Regulation 7 substituted	B2715
7. Plea of defaulter	B2717
8. Regulation 8 substituted	B2717
8. Procedure at hearing	B2717
9. Regulation 8A added	B2721
8A. Record of proceedings.....	B2721
10. Regulation 9 substituted	B2721

Traffic Wardens (Discipline) (Amendment) Regulation 2012

L.N. 62 of 2012
B2709

Section	Page
9.	Adding or amending charges.....B2721
11.	Regulation 10 heading amended (proceedings after hearing).....B2723
12.	Regulation 11A addedB2723
11A.	Proceedings in defaulter’s absenceB2723
13.	Regulation 12 substituted.....B2723
12.	Punishment.....B2725
14.	Regulation 14 amended (powers of superintendents on appeal)B2727
15.	Regulation 19 addedB2729
19.	Transitional provisionsB2731
16.	Schedule amended (powers of punishment).....B2731

Traffic Wardens (Discipline) (Amendment) Regulation 2012

(Made by the Secretary for Transport and Housing under section 11 of the Road Traffic Ordinance (Cap. 374))

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. Traffic Wardens (Discipline) Regulations amended

The Traffic Wardens (Discipline) Regulations (Cap. 374 sub. leg. J) are amended as set out in sections 3 to 16.

3. Regulation 2 amended (interpretation)

(1) Regulation 2, definition of *tribunal*—

(a) Paragraph (a), Chinese text—

Repeal

“法律”

Substitute

“處分”;

(b) **Repeal paragraph (b).**

(2) Regulation 2, Chinese text, definition of 警司—

Repeal the full stop

Substitute a semicolon.

(3) 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 (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;

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 8A(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)

Regulation 3(2)(k)—

Repeal

“calculated”

Substitute

“likely”.

5. Regulations 5A and 5B added

After regulation 5—

Add

“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. Regulation 6 substituted

Regulation 6—

Repeal the regulation

Substitute

“6. 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.”.

7. Regulation 7 substituted

Regulation 7—

Repeal the regulation

Substitute

“7. Plea of defaulter

- (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. Regulation 8 substituted

Regulation 8—

Repeal the regulation

Substitute

“8. Procedure at hearing

- (1) If a defaulter pleads guilty to a charge at a hearing, the tribunal must ask if the defaulter wishes to make or produce to the tribunal a statement which contains any relevant matters that the defaulter wishes to be taken into consideration by the tribunal, and such a statement must be entered on the official record of proceedings.
- (2) If the defaulter pleads not guilty to the charge 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.

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- (3) When the examination of all witnesses in support of the charge has been completed, the tribunal 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 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 tribunal and then the defaulter or the defence representative may address the tribunal in reply.
 - (7) The 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 tribunal by a witness.
 - (10) The 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 tribunal that the adjournment would serve the ends of justice.

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

9. Regulation 8A added

After regulation 8—

Add

“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.”.

10. Regulation 9 substituted

Regulation 9—

Repeal the regulation

Substitute

“9. Adding or amending charges

- (1) The prosecutor may amend a charge or add a further charge at any time before the tribunal communicates a finding to the defaulter.
- (2) The 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 Part may be cross-examined and re-examined.”.

11. Regulation 10 heading amended (proceedings after hearing)

Regulation 10, Chinese text, heading—

Repeal

“法律”

Substitute

“處分”.

12. Regulation 11A added

After regulation 11—

Add

“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.”.

13. Regulation 12 substituted

Regulation 12—

Repeal the regulation

Substitute

“12. Punishment

- (1) A traffic warden who has pleaded guilty to or is found guilty of a disciplinary offence before or by the tribunal may, subject to regulation 17, be awarded any of the following punishments by the 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;
 - (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 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 under regulation 10(6)(b) or (7)(b)(ii), the superintendent or the senior police officer may exercise all the powers of punishment conferred by regulation 17.
- (3) Despite this regulation, a traffic warden who—
 - (a) has pleaded guilty to or is found guilty of a disciplinary offence; and
 - (b) is to be dismissed by the Commissioner or a senior police officer,

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

- (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,

must, if he or she fails to comply with the order, be dismissed without retirement benefits.”.

14. Regulation 14 amended (powers of superintendents on appeal)

- (1) Regulation 14, heading—

Repeal

“Powers of superintendents on appeal”

Substitute

“Powers of superintendent, senior police officer and Commissioner on appeal”.

- (2) Regulation 14(1)(b)—

Repeal

“no greater punishment shall be awarded by him unless the defaulter is given an opportunity of making oral representations to him as to why the punishment”

Substitute

“no greater punishment may be awarded unless the defaulter is given an opportunity of making representations as to why the original punishment”.

- (3) Regulation 14(2), Chinese text—

Repeal

“法律”

Substitute

“處分”.

(4) Regulation 14(6)—

Repeal everything before subparagraph (b)

Substitute

“(6) The Commissioner or a senior police officer must not—

(a) substitute for any punishment awarded by a tribunal any greater punishment unless the defaulter is given an opportunity of making representations as to why the original punishment should not be increased;”.

(5) Regulation 14—

Repeal paragraph (7)

Substitute

“(7) On an appeal under regulation 13(1) or 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;

(b) may hear any additional evidence that he or she 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.”.

15. Regulation 19 added

After regulation 18—

Add

“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. 62 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.”.

16. 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, English text, entry relating to Superintendent, column (3), paragraph 1(d)—

Repeal

“shall extend”

Substitute

“extends”.

- (3) The Schedule, entry relating to Senior Police Officer, column (2), paragraph 1(c)—

Repeal

“or”.

- (4) The Schedule, entry relating to Senior Police Officer, column (2), after paragraph 1(c)—

Add

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

- (5) The Schedule, English text, entry relating to Senior Police Officer, column (2), paragraph 1(d)—

Repeal

“shall extend”

Substitute

“extends”.

- (6) The Schedule, English text, entry relating to Senior Police Officer, column (2), paragraph 4(b)—

Repeal

“forthwith”

Substitute

“immediately”.

- (7) The Schedule, entry relating to Senior Police Officer, column (3), after paragraph 1(c)—

Add

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

- (8) The Schedule, English text, entry relating to Senior Police Officer, column (3), paragraph 1(d)—

Repeal

“shall extend”

Substitute

“extends”.

- (9) The Schedule, English text, entry relating to Senior Police Officer, column (3), paragraph 2(b)—

Repeal

“forthwith”

Substitute

“immediately”.

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

Repeal

“or”.

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

Add

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

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

Repeal

“shall extend”

Substitute

“extends”.

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

Repeal

“forthwith”

Substitute

“immediately”.

- (14) The Schedule, entry relating to Commissioner of Police, column (3), after paragraph 1(c)—

Add

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

- (15) The Schedule, English text, entry relating to Commissioner of Police, column (3), paragraph 1(e)—

Repeal

“shall extend”

Substitute

“extends”.

- (16) The Schedule, English text, entry relating to Commissioner of Police, column (3), paragraph 2(b)—

Repeal

“forthwith”

Substitute

“immediately”.

Eva CHENG
Secretary for Transport and
Housing

18 April 2012

Explanatory Note

This Regulation amends the Traffic Wardens (Discipline) Regulations (Cap. 374 sub. leg. J) (*principal regulations*). The main purposes of the amendments are set out below.

2. Section 3(1)(b) amends the definition of *tribunal* to remove an obsolete reference.
3. Section 4 amends regulation 3(2)(k) of the principal regulations to avoid doubt concerning an existing disciplinary offence.
4. Section 5 adds a new regulation 5A to the principal regulations to require the Commissioner of Police (*Commissioner*) to appoint a prosecutor for the disciplinary proceedings against traffic wardens.
5. With the addition of new regulation 5B to the principal regulations (section 5) and the substitution of a new regulation 8 of the principal regulations (section 8), a traffic warden or senior traffic warden 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 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.
6. New regulation 8(6) of the principal regulations substituted by section 8 allows the defaulter to address the tribunal after the prosecutor has addressed the tribunal.
7. Section 9 adds a new regulation 8A 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.

Traffic Wardens (Discipline) (Amendment) Regulation 2012

Explanatory Note
Paragraph 8

L.N. 62 of 2012
B2741

8. Section 12 adds a new regulation 11A 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.
9. Sections 13 and 16 deal with regulation 12 of, and the Schedule to, the principal regulations to include deferment or stoppage of increment as a possible punishment for the contravention of a disciplinary offence.