
L.N. 63 of 2012

Customs and Excise Service (Discipline) (Amendment) Rules 2012

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Customs and Excise Service (Discipline) (Amendment) Rules 2012

(Made by the Chief Executive under section 16 of the Customs and Excise Service Ordinance (Cap. 342) after consultation with the Executive Council)

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. Customs and Excise Service (Discipline) Rules amended

The Customs and Excise Service (Discipline) Rules (Cap. 342 sub. leg. B) are amended as set out in rules 3 to 14.

3. Rule 2 amended (interpretation)

(1) Rule 2, English text, definition of *inspector*—

Repeal the full stop

Substitute a semicolon.

(2) Rule 2, Chinese text, definition of 關長—

Repeal the full stop

Substitute a semicolon.

(3) Rule 2—

Add in alphabetical order

“*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 6(1)(a), (b) or (c) who represents an officer charged at a hearing;

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

officer charged (被控人員) means a subordinate officer charged with a disciplinary offence;

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

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

4. Rule 5A added

After rule 5—

Add

“5A. Appointment of prosecutor

The Commissioner must appoint for the purposes of the proceedings under these rules against an officer charged a prosecutor who is a member not below the rank of the officer charged.”.

5. Rule 6 substituted

Rule 6—

Repeal the rule

Substitute

“6. Representation of officer charged at hearing

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

- (a) a subordinate officer of the choice of the officer charged, other than a subordinate officer who is a barrister or solicitor;

- (b) (subject to the Commissioner's approval) a barrister or solicitor; or
- (c) any other person of the choice of the officer charged who is approved by the Commissioner for the purpose,

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

- (2) If the Commissioner gives approval under subrule (1)(b), the officer charged may be represented at the hearing by a barrister or solicitor of the officer's choice.
- (3) Despite subrule (1), the officer charged must attend the hearing in person.
- (4) If the officer charged is represented at the hearing by a barrister or solicitor, the Commissioner and the prosecutor may separately be assisted by a barrister or solicitor at the hearing.”.

6. Rule 7 substituted

Rule 7—

Repeal the rule

Substitute

“7. Documents to be supplied to officer charged

An officer charged must, as soon as possible, be supplied with—

- (a) a copy of any written statement made by the officer under rule 4;

- (b) a copy of—
 - (i) the report, allegation or complaint on which the charge is founded or that part of the report, allegation or complaint relating to the officer; and
 - (ii) any report on the document specified in subparagraph (i),
whether or not those documents are classified confidential;
- (c) a copy of any statement relating to the charge made by any witness to be called in support of the charge, and the witness's name and address; and
- (d) a copy of any statement relating to the charge made by any person (other than a witness to be called in support of the charge) to the Commissioner or to any person acting on the Commissioner's behalf, and the name and address of the person making that statement.”.

7. Rule 8 substituted

Rule 8—

Repeal the rule

Substitute

“8. Procedure at hearing

- (1) An officer charged must attend at the place of hearing at the time of which notice has been given.
- (2) The Commissioner must read the charge to the officer charged, who may then change his or her plea, if he or she so wishes.

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- (3) If the officer charged pleads guilty, the plea is to be entered on the official record of proceedings, and the Commissioner must ask if the officer wishes to make any statement.
 - (4) The officer charged may then—
 - (a) make a statement, which must be recorded on the official record of proceedings; or
 - (b) hand in a statement of matters which the officer wishes to be taken into consideration by the Commissioner.
 - (5) If the officer charged pleads not guilty, the prosecutor or any barrister or solicitor assisting the prosecutor may make an address setting out generally the facts of the case and may call witnesses in support of the charge, and those witnesses may be cross-examined and re-examined.
 - (6) The Commissioner may take the evidence of a witness by reference to a written statement made by the witness, which may be amended or added to by the witness at the hearing.
 - (7) When the prosecutor or any barrister or solicitor assisting the prosecutor has examined all witnesses in support of the charge, the officer charged or the defence representative may address the Commissioner only for the purpose of showing that no prima facie case has been established.
 - (8) If it appears to the Commissioner that there is a prima facie case, the Commissioner must ask if the officer charged wishes to give evidence and call witnesses.
 - (9) If the officer charged gives evidence, the officer may be cross-examined and re-examined and any witness called by the officer may be examined, cross-examined and re-examined.

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- (10) At the conclusion of all the evidence, the prosecutor or any barrister or solicitor assisting the prosecutor may address the Commissioner and then the officer charged or the defence representative may make an address in reply.
 - (11) The Commissioner may ask any witness any question that the Commissioner considers will assist in determining the issues raised.
 - (12) The Commissioner may at any time call any witness whom the Commissioner considers may be able to assist in determining the issues raised.
 - (13) Evidence must not be taken on oath or affirmation.
 - (14) The officer charged, the defence representative, the prosecutor and any barrister or solicitor assisting the prosecutor may inspect any exhibit produced to the Commissioner by a witness.
 - (15) The Commissioner may adjourn the hearing from time to time as the Commissioner considers necessary for the proper determination of the proceedings.”.

8. Rule 8A added

After rule 8—

Add

“8A. Record of proceedings

- (1) The Commissioner must make, or cause to be made, a written record of the proceedings of a hearing.
- (2) The Commissioner may make, or cause to be made, an audio recording or audio and visual recording of the proceedings, or any part of the proceedings, of a hearing.

- (3) If an officer charged wishes to appeal under rule 20, the officer may make a request to the Commissioner within the period mentioned in rule 23 for a copy of the official record of proceedings.
- (4) On a request under subrule (3), the Commissioner must supply the officer charged with a copy of the official record of proceedings.”.

9. Rule 9 amended (adding or amending charges)

- (1) Rule 9—

Repeal subrule (2)

Substitute

- “(2) The Commissioner must read and explain the amended or new charge to the officer charged, who must be called upon to plead to the amended or new charge in person, and is entitled to a reasonable adjournment to prepare a further defence.”.

- (2) Rule 9—

Repeal subrule (3)

Substitute

- “(3) Rule 8 applies in respect of the amended or new charge.”.

10. Rule 9A added

- Part III, after rule 9—

Add

“9A. Proceedings in the absence of officer charged

Where an officer charged is required to appear in person in any proceedings under these rules and repeatedly fails to appear, the Commissioner may proceed in the absence of the officer if satisfied that the officer has no reasonable excuse for the failures.”.

11. Rule 11 substituted

Rule 11—

Repeal the rule

Substitute

“11. 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 official record of proceedings (including the charge) certified by the Commissioner to be a true copy of the original;
 - (b) the record of service of the officer charged; and
 - (c) 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 officer charged of the reference by serving on the officer a notice in writing.
- (3) The officer charged may make representations in writing to the Chief Executive within 14 days from the service of the notice under subrule (2) or any further period that the Chief Executive may allow.”.

12. Rule 12 substituted

Rule 12—

Repeal the rule

Substitute

“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 officer charged, 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 a further investigation or 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, impose a punishment within the Chief Executive’s powers.”.

13. Rule 14 substituted

Rule 14—

Repeal the rule

Substitute

“14. Procedure where Commissioner has delegated powers

- (1) If a senior officer other than the Commissioner exercises or performs the Commissioner’s powers, functions or duties under rules 10 and 11—

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- (a) a reference in those rules to the Commissioner is to be regarded as a reference to the senior officer; and
- (b) a reference in those rules and rule 12 to the Chief Executive is to be regarded as a reference to the Commissioner.
- (2) A case referred to the Commissioner by another senior officer under rule 10(b)(ii) as modified by subrule (1) may be referred to the Chief Executive by the Commissioner in accordance with rule 11.”.

14. Rule 18 amended (punishment where criminal offence is committed)

Rule 18(3)(a)—

Repeal

“proceedings”

Substitute

“criminal proceedings”.

Donald TSANG
Chief Executive

20 April 2012

Explanatory Note

These Rules amend the Customs and Excise Service (Discipline) Rules (Cap. 342 sub. leg. B) (*principal rules*). The main purposes of the amendments are set out below.

2. With the substitution of new rules 6 and 8 of the principal rules (rules 5 and 7), a subordinate officer of the Customs and Excise Service charged with a disciplinary offence (*officer charged*) may choose to be represented at the hearing of the charge by a barrister or solicitor if the Commissioner of Customs and Excise (*Commissioner*) so approves, or by another person approved by the Commissioner. The officer charged is still required to attend the hearing in person. If the officer charged is legally represented at the hearing, the Commissioner and the prosecutor may separately be assisted by a barrister or solicitor at the hearing.
3. Rule 8 adds a new rule 8A to the principal rules under which the Commissioner 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.
4. Rule 10 adds a new rule 9A to the principal rules to state that the Commissioner may proceed with any proceedings in the absence of the officer charged, if the officer is required to appear in person in those proceedings but, without reasonable excuse, fails to appear repeatedly.