
L.N. 61 of 2012

Government Flying Service (Discipline) (Amendment) Regulation 2012

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Government Flying Service (Discipline) (Amendment) Regulation 2012

(Made by the Secretary for Security under section 13 of the
Government Flying Service Ordinance (Cap. 322))

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. Government Flying Service (Discipline) Regulation amended

The Government Flying Service (Discipline) Regulation (Cap. 322 sub. leg. A) is amended as set out in sections 3 to 12.

3. Section 2 amended (interpretation)

(1) Section 2, Chinese text, definition of 檢控員—

Repeal the full stop

Substitute a semicolon.

(2) Section 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 section 9(1)(a), (b) or (c) who represents a member charged with a disciplinary offence 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 section 11A(1);

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

4. Section 3 amended (saving of Public Service (Administration) Order, etc. on interdiction, etc.)

Section 3—

Repeal subsection (7).

5. Section 8A added

After section 8—

Add

“8A. Appointment of disciplinary tribunal and prosecutor

(1) The Senior Officer appointed under section 8(1)(b) to hear and determine a charge constitutes the disciplinary tribunal for the charge.

(2) The Controller must appoint for the purposes of the proceedings under this Regulation against a member charged a prosecutor who is a member not below the rank of the member charged.”.

6. Section 9 substituted

Section 9—

Repeal the section

Substitute

“9. Representation of member charged with disciplinary offence at hearing

(1) A member charged with a disciplinary offence may be represented at a hearing by—

- (a) a member of the choice of the member charged, other than the Controller, a member who may be involved in the proceedings under this Regulation to which the charge relates or a member who is a barrister or solicitor;
- (b) (subject to the Controller's approval) a barrister or solicitor; or
- (c) any other person of the choice of the member charged who is approved by the Controller for the purpose,

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

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

7. Section 11 substituted

Section 11—

Repeal the section

Substitute

“11. Procedure at hearing

- (1) A member charged with a disciplinary offence must attend at the place of hearing at the time of which notice has been given.

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- (2) The disciplinary tribunal must read the charge to the member charged, who may then change his or her plea, if he or she so wishes.
 - (3) If the member charged pleads guilty, the disciplinary tribunal must enter the plea on the official record of proceedings and ask if the member wishes to make any statement.
 - (4) The member 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 member wishes to be taken into consideration by the disciplinary tribunal.
 - (5) If the member 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 disciplinary tribunal may take the evidence of a witness by reference to a written statement made by the witness, which the witness may amend or add to, and be cross-examined on, 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 member charged or the defence representative may address the disciplinary tribunal only for the purpose of showing that no prima facie case has been established.
 - (8) If it appears to the disciplinary tribunal that there is a prima facie case, it must ask if the member charged wishes to give evidence and call witnesses.

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

8. Section 11A added

After section 11—

Add

“11A. Record of proceedings

- (1) The disciplinary tribunal must make, or cause to be made, a written record of the proceedings of a hearing.

- (2) The disciplinary 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.
- (3) If a member charged with a disciplinary offence wishes to appeal under section 21, the member may make a request to the disciplinary tribunal for a copy of the official record of proceedings.
- (4) On a request made under subsection (3), the disciplinary tribunal must supply the member charged with a copy of the official record of proceedings.”.

9. Section 12 amended (adding or amending charges)

- (1) Section 12, Chinese text, heading—

Repeal

“增補”

Substitute

“增加”.

- (2) Section 12—

Repeal subsection (2)

Substitute

“(2) The disciplinary tribunal must read and explain the amended or new charge to the member 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.”.

- (3) Section 12—

Repeal subsection (3)

Substitute

“(3) Section 11 applies in respect of the amended or new charge.”.

10. Section 12A added

Part III, after section 12—

Add

“12A. Proceedings in the absence of member charged

Where a member charged with a disciplinary offence is required to appear in person in any proceedings under this Regulation and repeatedly fails to appear, the disciplinary tribunal may proceed in the absence of the member if satisfied that the member has no reasonable excuse for the failures.”.

11. Section 14 substituted

Section 14—

Repeal the section

Substitute

“14. Reference of case to Secretary or Controller

- (1) If a disciplinary tribunal refers a case to the Secretary or the Controller under section 13(b), it must forward to the Secretary or the Controller—
 - (a) a copy of the official record of proceedings (including the charge) certified by itself to be a true copy of the original;
 - (b) the record of service of the member charged; and
 - (c) a report setting out—
 - (i) its reasons for considering the charge proved; and
 - (ii) its recommendation with respect to punishment or otherwise.

- (2) The disciplinary tribunal must inform the member charged of the reference by serving on the member a notice in writing.
- (3) The member charged may make representations in writing to the Secretary or the Controller within 14 days from the service of the notice under subsection (2) or any further period that the Secretary or the Controller may allow.”.

12. Section 21 amended (appeals)

Section 21(1), after “the Secretary”—

Add

“in writing”.

Ambrose S. K. LEE
Secretary for Security

16 April 2012

Explanatory Note

This Regulation amends the Government Flying Service (Discipline) Regulation (Cap. 322 sub. leg. A) (*principal regulation*). The main purposes of the amendments are set out below.

2. Section 4 repeals section 3(7) of the principal regulation to remove the restriction against leaving Hong Kong by an Officer of the Government Flying Service under interdiction.
3. With the substitution of new sections 9 and 11 of the principal regulation (sections 6 and 7), a member of the Government Flying Service charged with a disciplinary offence (*member charged*) may choose to be represented at the hearing of the charge by a barrister or solicitor if the Controller of the Government Flying Service (*Controller*) so approves, or by another person approved by the Controller. The member charged is still required to attend the hearing in person. If the member charged is legally represented at the hearing, the disciplinary tribunal and the prosecutor may separately be assisted by a barrister or solicitor at the hearing.
4. Section 8 adds a new section 11A to the principal regulation under which the disciplinary 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.
5. Section 10 adds a new section 12A to the principal regulation to state that the disciplinary tribunal may proceed with any proceedings in the absence of the member charged, if the member is required to appear in person in those proceedings but, without reasonable excuse, fails to appear repeatedly.
6. Section 12 amends section 21 of the principal regulation to state that an appeal under the principal regulation is to be made in writing.