

LEGISLATIVE COUNCIL BRIEF

AMENDMENTS TO SUBSIDIARY LEGISLATION ON DISCIPLINE MADE UNDER DISCIPLINED SERVICES ORDINANCES

INTRODUCTION

At the meeting of the Executive Council on 17 April 2012, the Council ADVISED and the Acting Chief Executive ORDERED that the following amendment regulations/rules should be made –

- (a) the Customs and Excise Service (Discipline) (Amendment) Rules 2012 (**Annex A**);
 - (b) the Fire Services Ordinance (Amendment of Second Schedule) Regulation 2012 (**Annex B**);
 - (c) the Police (Discipline) (Amendment) Regulation 2012 (**Annex C**);
and
 - (d) the Prison (Amendment) Rules 2012 (**Annex D**).
2. The Secretary for Security and the Secretary for Transport and Housing have also made the Government Flying Service (Discipline) (Amendment) Regulation 2012 (**Annex E**) and the Traffic Wardens (Discipline) (Amendment) Regulation 2012 (**Annex F**) respectively.

JUSTIFICATIONS

3. The purposes of making the amendment regulations/rules are to introduce the following key amendments to the subsidiary legislation on discipline (“Subsidiary Regulations¹”) made under various ordinances

¹ In this paper, the Subsidiary Regulations are the Customs and Excise Service (Discipline) Rules (Cap. 342 sub. leg. B), the First to Fourth Schedules to the Fire Services Ordinance (Cap. 95), the Government Flying Service (Discipline) Regulation (Cap. 322 sub. leg. A), the Police (Discipline) Regulations (Cap. 232 sub. leg. A), the Prison Rules (Cap. 234 sub. leg. A) and the Traffic Wardens (Discipline) Regulations (Cap. 374 sub. leg. J).

governing the relevant disciplined services (“Disciplined Services Ordinances”) –

Applicable to all Subsidiary Regulations

- (a) an accused² may, on application, be allowed to have legal or other forms of representation at his/her disciplinary hearing where fairness so requires (paragraphs 4 to 6 below);
- (b) a written record of the proceedings of a disciplinary hearing is to be made and the adjudicating officer/tribunal may cause an audio recording or an audio and visual recording of the whole or part of a disciplinary hearing to be made (paragraphs 7 and 8 below);
- (c) to make explicit provisions stipulating that an adjudicating officer/tribunal may proceed with any part of the disciplinary proceedings in the absence of an accused if the accused is required to appear in those proceedings but, without reasonable justifications, repeatedly fails to appear (paragraphs 9 to 11 below);

Applicable to the Police (Discipline) Regulations (“P(D)R”) and the Traffic Wardens (Discipline) Regulations (“TW(D)R”)

- (d) the offence of “conduct calculated to bring the public service into disrepute” in the P(D)R and the TW(D)R to be amended to make it clear that the offence may be established without a subjective intention on the part of the accused (paragraphs 12 and 13 below);

Applicable to the P(D)R only

- (e) the power vested in the Chief Secretary for Administration (“CS”) under the P(D)R regarding the appointment of an appropriate tribunal³ on request by the Commissioner of Police (“CP”) or an accused who is an inspector to be transferred to the Secretary for the Civil Service (“SCS”); and CS’s function under the P(D)R regarding the communication of the Chief Executive’s decision on an appeal from an accused who is an inspector to be transferred to the Chief Executive’s Office (“CEO”) (paragraphs 14 to 16 below);
- (f) certain arrangements of disciplinary proceedings for junior police officers (“JPOs”) under Part II of the P(D)R to be aligned with

² In this paper, an accused means a member of the relevant disciplined service against whom disciplinary proceedings have been instituted.

³ Appropriate tribunal in the P(D)R means an adjudicating tribunal for a disciplinary case. It could be a single officer or a board.

those for inspectors under Part III of the P(D)R (paragraph 17 below);

Applicable to the TW(D)R only

- (g) the TW(D)R to be amended so that an accused, instead of a prosecutor, is to have the final address at a disciplinary hearing; and that “deferment or stoppage of increment” to be included as one of the possible punishments (paragraphs 18 and 19 below); and

Applicable to the Government Flying Service (Discipline) Regulation (“GFS(D)R”) only

- (h) the provision in the GFS(D)R which prohibits an officer under interdiction from leaving Hong Kong without the permission of the Controller of the Government Flying Service to be repealed (paragraph 20 below).

Detailed justifications are given in the ensuing paragraphs.

(a) To allow legal or other forms of representation at a disciplinary hearing for an accused where fairness so requires

4. The Court of Final Appeal has earlier ruled that regulation 9(11) and (12) of the P(D)R, which explicitly prohibits legal representation for an accused at a disciplinary hearing, is inconsistent with Article 10 of the Hong Kong Bill of Rights⁴, and is hence unconstitutional, null and void (*Lam Siu Po v. Commissioner of Police* (FACV 9/2008) (“the CFA judgment”). According to the CFA judgment, there is no absolute right to legal representation at a disciplinary hearing. Legal representation is a matter for the disciplinary authority to deal with under its discretion in accordance with the principle of fairness. The judgment also held that the disciplinary authority ought to be able to exercise discretion to permit appropriate forms of representation other than legal representation, whether by fellow officers or other persons, at a disciplinary hearing.

5. In the light of the CFA judgment, we **propose** to provide explicit provisions in the Subsidiary Regulations to allow an accused to apply for, subject to the approval of the concerned disciplinary authority, representation at his/her disciplinary hearing by a barrister or solicitor⁵ or by another person. Where an accused is legally represented, the adjudicating officer/tribunal and

⁴ Article 10 of the Hong Kong Bill of Rights is about the right to fair and public hearing.

⁵ A “barrister” or “solicitor” as defined in section 2 of the Legal Practitioners Ordinance (Cap. 159).

the prosecutor of the relevant disciplinary hearing may be assisted by their respective barristers or solicitors.

6. In considering an application from an accused for legal representation, the disciplinary authority should take into account the circumstances of each case and determine whether fairness requires that the accused be assisted by a legal representative. The disciplinary authority may take into account, but is not limited to, a host of factors such as the seriousness of the charge and the potential penalty, whether any points of law are likely to arise, the capacity of the applicant to present his/her own case, the need for fairness among the parties involved at the disciplinary hearing⁶, etc. In considering an application for other forms of representation at a disciplinary hearing, the disciplinary authority may consider the circumstances of the case, the requirements of procedural fairness, and other factors such as the possibility of leakage of sensitive information. Following the CFA judgment and pending the amendment of the Subsidiary Regulations, disciplined services departments (“DSDs”) have already put in place administrative arrangements and promulgated guidelines on the application procedures and factors for consideration on applications for legal or other forms of representation. As at 31 March 2012, DSDs have approved over 100 applications for legal or other forms of representation, amounting to about 45% of the total applications received.

(b) To stipulate that a written record of the proceedings of a disciplinary hearing is to be made and that the adjudicating officer/tribunal may cause to make an audio recording or an audio and visual recording of the whole or part of a disciplinary hearing

7. At present, a record of the proceedings (“RoP”) of a disciplinary hearing conducted under the Subsidiary Regulations is normally prepared in written form. Under certain circumstances, the written RoP will be submitted, amongst other documents, to the relevant authority for the determination of punishment or appeal. DSDs have also issued administrative guidelines on arranging audio recording of disciplinary hearings as a standing arrangement, and audio and visual recording on prior request from an accused. The accused will be given, at his/her request, a copy of the audio record, or audio and visual record (if any), of the hearing.

8. To provide a clear legal basis for the use of written RoP and for arranging audio recording or audio and visual recording of a disciplinary hearing, we **propose** to stipulate clearly in the Subsidiary Regulations that a written RoP of a hearing is to be made; and that an audio recording or an

⁶ These are some of the factors referred to by the CFA in the case of *Stock Exchange of Hong Kong Ltd v. New World Development Co Ltd and Others* (FACV 22/2005).

audio and visual recording of the whole or part of a hearing may be made.

- (c) **To provide explicit provisions for a disciplinary tribunal to proceed with any part of the disciplinary proceedings in the absence of an accused if the accused is required to appear in those proceedings but, without reasonable justifications, repeatedly fails to appear**

9. There are disciplinary cases where the accused repeatedly fails to appear at scheduled hearing sessions, causing delays to the disciplinary proceedings. The Subsidiary Regulations do not provide explicit provisions for an adjudicating officer/tribunal to proceed with disciplinary proceedings in the absence of an accused. Legal advice has confirmed that hearing in absence is not unlawful if the accused fails to appear repeatedly without reasonable justifications. The Public Service (Administration) Order, which in general governs disciplinary matters for civilian civil servants and senior ranking officers of the disciplined service grades in DSDs, provides explicit provisions on such a power.

10. In order to put the matter beyond doubt, we **propose** to include explicit provisions in the Subsidiary Regulations to allow an adjudicating officer/tribunal to proceed with disciplinary proceedings in the absence of an accused if the accused is required to appear in those proceedings but, without reasonable justifications, has repeatedly failed to do so.

11. To complement this legislative proposal, DSDs will promulgate administrative guidelines on the factors to be considered and arrangements to be observed by an adjudicating officer/tribunal when deciding whether or not to proceed with the disciplinary proceedings in the absence of an accused. The factors for consideration accepted by both the management and staff sides of DSDs include proofs that prior notices requiring the accused's attendance at the disciplinary hearing have been duly served, the nature and circumstances of the accused's behaviour in absenting himself/herself, the extent of the disadvantage to the accused in not being present at the hearing, whether further adjournment might resolve the matter, the general public interest and the particular interest of witnesses that the hearing should take place within a reasonable time⁷, etc. An adjudicating officer/tribunal must exercise the discretion with great care and only when fully justified.

⁷ These factors are based on the English Court of Appeal judgment in *R v. Hayward; R v. Jones; R v. Purvis* [2001] QB 862 as affirmed by the House of Lords in *R v. Jones (Anthony)* [2002] UKHL 5.

(d) To amend the offence of “conduct calculated to bring the public service into disrepute” in the P(D)R and the TW(D)R

12. The offence of “conduct calculated to bring the public service into disrepute”⁸ is one of the disciplinary offences for police officers and Traffic Warden grade officers under the P(D)R and the TW(D)R respectively. The Court of Appeal ruled in *Chiu Hoi Po v. Commissioner of Police* (CACV 200/2006) that the English word “calculated” in the said offence meant “likely” in the context of the P(D)R; and that as a matter of purposive interpretation, the interpretation of the Chinese version of the offence could not have been intended to be confined to the limited situation of a subjective intention.

13. We **propose** to put the matter beyond doubt by replacing the word “calculated (刻意)” by “likely (相當可能)” to make it clear that the offence may be established without a subjective intention on the part of the accused to bring the public service into disrepute.

(e) To transfer the functions of CS under the P(D)R to SCS or CEO

14. Following the implementation of the Political Appointment System in July 2002, the Administration has progressively transferred some statutory powers vested in CS and the Financial Secretary to the relevant bureau secretaries to better reflect the latter’s portfolios and responsibilities.

15. Under the P(D)R, CS has the following functions –

- (a) to appoint an appropriate tribunal, in the form of a board comprising three public servants, on the request of CP or an accused who is an inspector; and
- (b) to communicate to CP and an accused who is an inspector of the decision made by the Chief Executive on an appeal lodged by the accused.

16. We **propose** that SCS, instead of CS, should be vested with the power to appoint an appropriate tribunal to better reflect the division of responsibilities under the Political Appointment System. We further **propose** that the role to communicate the decision of the Chief Executive on an appeal should more appropriately be taken up by CEO.

⁸ The Chinese version of the offence currently reads “其行為刻意致使公共服務聲譽受損” in the P(D)R, and “刻意作出使公職人員蒙上壞名聲的行為” in the TW(D)R.

(f) To align certain arrangements of disciplinary proceedings for JPOs under Part II of the P(D)R with those for inspectors under Part III of the P(D)R

17. The procedures on disciplinary hearing, punishment and appeal in respect of JPOs and inspectors are governed by Parts II and III of the P(D)R respectively. In order to enhance efficiency and overall fairness, both the management and staff sides of the Hong Kong Police Force support the alignment of certain procedures under Parts II and III. We **propose** to –

- (a) amend the composition of an appropriate tribunal for proceedings against an accused who is a JPO from “a superintendent” to “a single police officer not below the rank of superintendent” or “a board appointed by CP”;
- (b) allow a senior police officer (“SPO”)⁹ or an accused who is a JPO to apply for the hearing of a disciplinary case before a board instead of a single police officer;
- (c) make consequential amendments arising from the appointment of a board as an appropriate tribunal for JPO disciplinary cases, namely an accused who is a JPO will be notified of the appointment of a board and the board is to send a report of the disciplinary hearing to the Force Discipline Officer¹⁰ to make an award;
- (d) provide for an explicit provision for the appointment of a prosecutor by CP for disciplinary proceedings against an accused who is a JPO to reflect the current practice;
- (e) allow an accused who is a JPO to submit “no *prima facie* case to answer” to an appropriate tribunal if he/she considers that no such case has been established after the examination of all prosecution witnesses. If his/her submission of “no *prima facie* case to answer” is accepted, he/she will be acquitted. Otherwise, the disciplinary proceedings will continue. This reflects the current practice where the JPO may make that submission under administrative guidelines;

⁹ SPO means a Chief Superintendent of Police, Assistant Commissioner of Police or Senior Assistant Commissioner of Police.

¹⁰ The Assistant Commissioner of Police (Personnel) has been designated as the Force Discipline Officer for the purposes of the P(D)R.

- (f) allow an accused who is a JPO to be re-examined after he/she has been cross-examined¹¹. This reflects the current practice where the JPO may be re-examined under administrative guidelines;
 - (g) remove the roles of SPO (except when an SPO is designated as the Force Discipline Officer) in JPO disciplinary proceedings after a hearing so as to streamline the process, including dispensing with the SPO's role to review the report of a disciplinary hearing by an appropriate tribunal and to confirm, vary or substitute the findings and/or the award of punishment by an appropriate tribunal;
 - (h) allow the prosecutor of a JPO disciplinary hearing to request an appropriate tribunal to review its findings and/or award;
 - (i) include the punishment of "deferment or stoppage of increment" as one of the possible punishments for JPO disciplinary cases; and
 - (j) allow CP to remit¹², on an appeal from an accused who is a JPO, any punishment awarded.
- (g) To amend the TW(D)R to give an accused (instead of a prosecutor) the final address at a disciplinary hearing and to include "deferment or stoppage of increment" as one of the possible punishments**

18. The TW(D)R provides that a prosecutor should make the final address at a disciplinary hearing. The arrangement is at odds with the general principle of procedural fairness because an accused should have an opportunity to address the tribunal with the last word. Indeed, under the current administrative practice, an accused of the Traffic Warden grade is given the opportunity to have the final address at a disciplinary hearing. We therefore **propose** to amend the TW(D)R to give the accused, instead of the prosecutor, the final address to the tribunal at a disciplinary hearing.

19. Separately, under the alignment proposal in paragraph 17(i) above, the punishment of "deferment or stoppage of increment" will be included as one of the possible punishments for JPO disciplinary cases. If the alignment proposal is approved for JPOs, the Traffic Warden grade will be the only civil service grade which is not subject to that possible punishment for disciplinary

¹¹ The P(D)R already stipulates that defence witnesses (other than an accused who gives evidence at a hearing) may be re-examined by an accused or his/her defence representative after they have been cross-examined.

¹² CP is empowered under the P(D)R to take other actions upon hearing an appeal, including substituting the punishment awarded with other punishments allowed by the P(D)R.

offences. To ensure consistency, we **propose** to include “deferment or stoppage of increment” in the TW(D)R as one of the possible punishments.

(h) To repeal a provision in the GFS(D)R which prohibits an officer under interdiction to leave Hong Kong without the permission of the Controller of the Government Flying Service

20. Section 3(7) of the GFS(D)R stipulates that an officer who is interdicted may not leave Hong Kong without the permission of the Controller of the Government Flying Service. As this provision may not be compatible with Article 31 of the Basic Law and Article 8(2) of the Hong Kong Bill of Rights concerning freedom to travel, we **propose** to repeal section 3(7) of the GFS(D)R. Pending the legislative amendment, the Government Flying Service has already undertaken not to invoke the relevant provision and will inform an officer under interdiction that the Controller’s permission to leave Hong Kong is not required.

OTHER OPTIONS

21. The proposal to allow legal or other forms of representation at a disciplinary hearing is to address the CFA judgment concerning the unconstitutionality of the relevant existing provisions. The proposal to repeal section 3(7) of the GFS(D)R seeks to comply with the Basic Law and the Hong Kong Bill of Rights. There is no alternative to these proposals. The other proposals are necessary for improving the disciplinary mechanism under the Subsidiary Regulations.

THE AMENDMENT REGULATIONS/RULES

22. The following amendment regulations/rules are made to give effect to the proposals in paragraphs 3 to 20 above –

- (a) the Customs and Excise Service (Discipline) (Amendment) Rules 2012 (“C&ES(D)(A)R”), which is made by the Chief Executive under section 16 of the Customs and Excise Service Ordinance (Cap. 342) to amend the Customs and Excise Service (Discipline) Rules (Cap. 342 sub. leg. B) (“C&ES(D)R”);
- (b) the Fire Services Ordinance (Amendment of Second Schedule) Regulation 2012 (“FSO(AS)R”), which is made by the Chief Executive in Council under section 26 of the Fire Services Ordinance (Cap. 95) to amend the Second Schedule to that Ordinance (“FSO Schedule”);

- (c) the Police (Discipline) (Amendment) Regulation 2012 (“P(D)(A)R”), which is made by the Chief Executive in Council under section 45 of the Police Force Ordinance (Cap. 232) to amend the P(D)R (Cap. 232 sub. leg. A);
 - (d) the Prison (Amendment) Rules 2012 (“P(A)R”), which is made by the Chief Executive in Council under section 25 of the Prisons Ordinance (Cap. 234) to amend the Prison Rules (Cap. 234 sub. leg. A) (“PR”);
 - (e) the Government Flying Service (Discipline) (Amendment) Regulation 2012 (“GFS(D)(A)R”), which is made by the Secretary for Security under section 13 of the Government Flying Service Ordinance (Cap. 322) to amend the GFS(D)R (Cap. 322 sub. leg. A); and
 - (f) the Traffic Wardens (Discipline) (Amendment) Regulation 2012 (“TW(D)(A)R”), which is made by the Secretary for Transport and Housing under section 11(n) of the Road Traffic Ordinance (Cap. 374) to amend the TW(D)R (Cap. 374 sub. leg. J).
23. The main provisions relating to the proposals are set out below –
- (a) To allow legal or other forms of representation at a disciplinary hearing for an accused where fairness so requires, by –
 - (i) substituting new rules 6 and 8 of the C&ES(D)R (rules 5 and 7 of the C&ES(D)(A)R);
 - (ii) substituting new rules 5 and 6 of Part I of the FSO Schedule (section 3(1) of the FSO(AS)R);
 - (iii) amending regulation 3C and substituting new regulations 9 and 21 of, and adding new regulations 7B and 18C to, the P(D)R (sections 7, 13, 15, 29 and 32 of the P(D)(A)R);
 - (iv) adding new rule 245A to, and substituting new rule 246 of, the PR (rules 9 and 10 of the P(A)R);
 - (v) substituting new sections 9 and 11 of the GFS(D)R (sections 6 and 7 of the GFS(D)(A)R);
 - (vi) adding new regulation 5B to, and substituting new regulation 8 of, the TW(D)R (sections 5 and 8 of the TW(D)(A)R);

- (b) To stipulate that a written RoP of a disciplinary hearing is to be made and that the adjudicating officer/tribunal may cause to make an audio recording or an audio and visual recording of the whole or part of a disciplinary hearing, by –
 - (i) adding new rule 8A to the C&ES(D)R (rule 8 of the C&ES(D)(A)R);
 - (ii) adding new rule 9 to Part I of the FSO Schedule (section 3(1) of the FSO(AS)R);
 - (iii) adding new regulations 10A and 22A to the P(D)R (sections 17 and 34 of the P(D)(A)R);
 - (iv) adding new rule 246B to the PR (rule 11 of the P(A)R);
 - (v) adding new section 11A to the GFS(D)R (section 8 of the GFS(D)(A)R);
 - (vi) adding new regulation 8A to the TW(D)R (section 9 of the TW(D)(A)R);

- (c) To provide explicit provisions for a disciplinary tribunal to proceed with any part of the disciplinary proceedings in the absence of an accused if the accused is required to appear in those proceedings but, without reasonable justifications, repeatedly fails to appear, by –
 - (i) adding new rule 9A to the C&ES(D)R (rule 10 of the C&ES(D)(A)R);
 - (ii) adding new rule 8 to Part I of the FSO Schedule (section 3(1) of the FSO(AS)R);
 - (iii) adding new regulations 12A and 24A to the P(D)R (sections 21 and 38 of the P(D)(A)R);
 - (iv) adding new rule 246A to the PR (rule 11 of the P(A)R);
 - (v) adding new section 12A to the GFS(D)R (section 10 of the GFS(D)(A)R);
 - (vi) adding new regulation 11A to the TW(D)R (section 12 of the TW(D)(A)R);

- (d) To amend the offence of “conduct calculated to bring the public service into disrepute” in the P(D)R and the TW(D)R, by –
 - (i) amending regulation 3(2)(m) of the P(D)R (section 4(2) of the P(D)(A)R);
 - (ii) amending regulation 3(2)(k) of the TW(D)R (section 4 of the TW(D)(A)R);
- (e) To transfer the functions of CS under the P(D)R to SCS or CEO, by substituting new regulations 16, 18 and 26 of, and adding new regulation 23B to, the P(D)R (sections 25, 27, 36 and 40 of the P(D)(A)R);
- (f) To align certain arrangements of disciplinary proceedings for JPOs under Part II of the P(D)R with those for inspectors under Part III of the P(D)R, by amending various existing regulations and substituting various new regulations under Parts I, II, III and IV of, and the Schedule to, the P(D)R (various sections of the P(D)(A)R);
- (g) To amend the TW(D)R to give an accused (instead of a prosecutor) the final address at a disciplinary hearing and to include “deferment or stoppage of increment” as one of the possible punishments, by –
 - (i) substituting new regulation 8(6) of the TW(D)R (section 8 of the TW(D)(A)R);
 - (ii) substituting new regulation 12 of, and amending the Schedule to, the TW(D)R (sections 13 and 16 of the TW(D)(A)R); and
- (h) To repeal section 3(7) of the GFS(D)R which prohibits an officer under interdiction to leave Hong Kong without the permission of the Controller of the Government Flying Service (section 4 of the GFS(D)(A)R).

LEGISLATIVE TIMETABLE

24. The amendment regulations/rules will be gazetted on 27 April 2012 and tabled in the Legislative Council on 2 May 2012 for negative vetting.

IMPLICATIONS OF THE PROPOSALS

25. The proposals are in conformity with the Basic Law, including the provisions concerning human rights. The legislative amendments set out in the amendment regulations/rules do not affect the existing binding effect of the Subsidiary Regulations being amended. They have no economic, productivity, environmental or sustainability implications. Additional financial and staffing implications, if any, will be absorbed by DSDs.

CONSULTATION

26. We conducted three rounds of consultation with the staff associations of the relevant disciplinary services in May 2010, December 2010 and January 2012. The staff sides generally support the proposals. Some staff associations have asked for further improvements to the disciplinary mechanism, e.g. the introduction of a mechanism to differentiate between disciplinary proceedings for misconduct which may result in dismissal or compulsory retirement from service and those which may not. These requests will be considered in the next phase of the review of the disciplinary mechanism.

27. The Legislative Council Panel on Public Service was consulted on the proposals on 20 December 2010. The Panel raised no in-principle objection to the legislative proposals.

PUBLICITY

28. A spokesman will be available to answer media enquiries when the amendment regulations/rules are gazetted and tabled in the Legislative Council for negative vetting.

BACKGROUND

29. Civil servants who are alleged to have committed disciplinary misconduct or convicted of criminal offences are dealt with, where applicable, under the Public Service (Administration) Order or the Disciplined Services Ordinances. The Public Service (Administration) Order is an executive order made by the Chief Executive under Article 48(4) of the Basic Law. It governs disciplinary matters for civilian civil servants and senior ranking civil servants of the disciplined service grades in general. It does not prohibit legal representation at a disciplinary hearing. As regards disciplinary matters of middle and junior ranking civil servants of the disciplined services

grades, they are governed by the respective Disciplined Services Ordinances and their subsidiary legislation on discipline owing to the unique operational needs of DSDs, in particular, the need to properly manage their frontline staff.

ENQUIRIES

30. Enquiries on this brief should be addressed to Ms Ivy LAW, Principal Assistant Secretary for the Civil Service (Conduct and Discipline), at telephone number 2810 2140.

Civil Service Bureau
25 April 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.
- (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.
- (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—

- (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”.

Chief Executive

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.

Fire Services Ordinance (Amendment of Second Schedule) Regulation 2012

(Made by the Chief Executive in Council under section 26 of the Fire Services Ordinance (Cap. 95))

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. Fire Services Ordinance amended

The Fire Services Ordinance (Cap. 95) is amended as set out in section 3.

3. Second Schedule amended

(1) Second Schedule—

Repeal Part I

Substitute

“Part I

Rules for Investigation into Offences against Discipline by Subordinate Officers and Members of Other Ranks

1. Interpretation of this Part

In this Part—

accused (被控人) means a subordinate officer or a member of other ranks charged with an offence against discipline;

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 5(1)(a) or (b) of this Part who represents an accused at a hearing;

hearing (聆訊) means a hearing conducted in respect of an offence against discipline;

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

2. Charge sheet

Every charge must be entered on a charge sheet.

3. Investigation of charge

Every charge is to be investigated by the Director by way of a hearing under this Part without delay.

4. Appointment of prosecutor

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

5. Representation of accused at hearing

- (1) An accused may be represented at a hearing by—
- (a) (subject to the Director's approval) a barrister or solicitor; or
 - (b) any other person of the accused's choice who is approved by the Director for the purpose, and the person specified in paragraph (a) or (b) may conduct the defence on the accused's behalf.
- (2) If the Director gives approval under subrule (1)(a), the accused may be represented at the hearing by a barrister or solicitor of the accused's choice.
- (3) Despite subrule (1), the accused must attend the hearing in person.

- (4) If the accused is represented at the hearing by a barrister or solicitor, the Director and the prosecutor may separately be assisted by a barrister or solicitor at the hearing.

6. Procedures at hearing

- (1) The Director must read and explain to the accused any charge against the accused.
- (2) The prosecutor or any barrister or solicitor assisting the prosecutor may—
- (a) call any witness;
 - (b) cross-examine any witness giving evidence for the accused; and
 - (c) make any statement in support of the charge.
- (3) The accused or the defence representative may—
- (a) cross-examine any witness giving evidence against the accused;
 - (b) call any witness; and
 - (c) make any statement to defend the accused.
- (4) Evidence must not be taken on oath or affirmation.
- (5) No documentary evidence may be used against the accused unless a copy of the documentary evidence, or access to the documentary evidence or a copy, has been given to the accused before the hearing.

7. Adding or amending charge

- (1) The prosecutor may amend a charge or add a new charge at any time before the Director communicates a finding to the accused.
- (2) The Director must read and explain any amended or new charge to the accused.

- (3) The accused is entitled to a reasonable adjournment to prepare a further defence.
- (4) The prosecutor and the accused—
- (a) may recall any witness who has given evidence for the purpose of further examination, cross-examination or re-examination; and
 - (b) may call any further witness.

8. 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 Director may proceed in the accused's absence if satisfied that the accused has no reasonable excuse for the failures.

9. Record of proceedings

- (1) The Director must make, or cause to be made, a written record of the proceedings of a hearing.
- (2) The Director 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. Finding and punishment

- (1) At the conclusion of a hearing, the Director must—
- (a) if in the Director's opinion the evidence does not show that any offence against discipline has been committed, dismiss the charge;
 - (b) if in the Director's opinion the evidence shows that an offence against discipline has been committed, either—
 - (i) award a punishment within the Director's powers; or
 - (ii) refer the case to the Chief Executive.

- (2) Any punishment awarded must be entered in the conduct sheet of the accused so punished.

11. Reference of case to Chief Executive

- (1) If the Director refers a case to the Chief Executive, the Director 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 9(1) of this Part which has been certified by the Director to be a true copy of the original;
 - (c) a report setting out—
 - (i) the Director's reasons for considering the charge proved;
 - (ii) the Director's recommendation with respect to punishment or otherwise; and
 - (d) the accused's conduct sheet.
- (2) The Director must inform the accused by notice in writing that the accused may, within 14 days from the service of the notice, forward any further representations that the accused wishes to make to the Chief Executive in writing.

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 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 Director, 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.

13. Procedure where Director has delegated powers

- (1) If the Director has authorized under section 6(2) of this Ordinance any other person to exercise or perform the Director's powers, functions or duties under rules 10, 11 and 12 of this Part—
- (a) a reference in those rules to the Director 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 Director.
- (2) A case referred to the Director by another person under rule 10(1)(b)(ii) of this Part as modified by subrule (1) may be referred to the Chief Executive by the Director in accordance with rule 11 of this Part.”.
- (2) Second Schedule, Part II, rule 2(a)—

Repeal

“proceedings”

Substitute

“criminal proceedings”.

Clerk to the Executive Council

COUNCIL CHAMBER

2012

Explanatory Note

This Regulation amends the Second Schedule to the Fire Services Ordinance (Cap. 95). The main purposes of the amendments are set out below.

2. New rule 4 of Part I of the Second Schedule (*relevant part*) requires the Director of Fire Services (*Director*) to appoint a prosecutor for the disciplinary proceedings against a member of the Fire Services Department other than a senior officer.
3. Under new rules 5 and 6 of the relevant part, a member of the Fire Services Department (other than a senior officer) who is charged with an offence against discipline (*accused*) may choose to be represented at the hearing of the charge by a barrister or solicitor if the Director so approves, or by another person approved by the Director. The accused is still required to attend the hearing in person. If the accused is legally represented at the hearing, the Director and the prosecutor may separately be assisted by a barrister or solicitor at the hearing.
4. New rule 8 of the relevant part states that the Director 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.
5. New rule 9 of the relevant part provides that the Director 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.

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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;
 - (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. 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”.

Clerk to the Executive Council

COUNCIL CHAMBER

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).

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”

Substitute

“criminal proceedings”.

Clerk to the Executive Council

COUNCIL CHAMBER

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.
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.

**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.
- (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”.

Secretary for Security

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.

Traffic Wardens (Discipline) (Amendment) Regulation 2012

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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.
- (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. 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”.

Secretary for Transport and Housing

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.
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.