

PUBLIC SERVICE (DISCIPLINARY) REGULATION

(Made by the Chief Executive under section 21 of the
Public Service (Administration) Order 1997
(Executive Order No. 1 of 1997))

PART I

PRELIMINARY

1. Commencement

This Regulation shall be deemed to have come into operation on 1 July 1997.

2. Interpretation

In this Regulation—

“legally qualified officer” (具有法律專業資格的人員) means any officer who is a solicitor or barrister within the meaning of section 2 of the Legal Practitioners Ordinance (Cap. 159);

“Master Pay Scale” (總薪級表) means the scale under the heading “Master Pay Scale” in the Civil Service Pay Scales published by the Secretary;

“MOD 1 Pay Scale” (第一標準薪級表) means the scale under the heading “Model Scale 1” in the Civil Service Pay Scales published by the Secretary;

“Order” (《命令》) means Public Service (Administration) Order 1997 (Executive Order No. 1 of 1997);

“Secretary” (局長) means the Secretary for the Civil Service.

PART II

CATEGORY A OFFICERS

3. Disciplinary procedures applicable to Category A Officers

This Part applies to Category A Officers only.

4. Officer to be given chance to exculpate himself

(1) The Chief Executive shall, before he orders an investigation for the purpose of section 9 or 10 of the Order—

- (a) notify the officer of the grounds on which it is proposed to order an investigation;
 - (b) call upon the officer to state in writing, within such reasonable period as the Chief Executive may specify, any grounds upon which he relies to exculpate himself.
- (2) If the officer—
- (a) does not furnish any such statement within the time specified by the Chief Executive; or
 - (b) fails to exculpate himself to the satisfaction of the Chief Executive,

the Chief Executive may order an investigation under section 9 or 10 of the Order.

5. Investigation under section 9 of the Order

(1) An investigation ordered by the Chief Executive for the purpose of section 9 of the Order shall be conducted by an investigating officer appointed by the Chief Executive.

(2) An investigating officer appointed pursuant to subsection (1) shall be a public servant who is senior to the officer who is the subject of the investigation.

6. Investigation under section 10 of the Order

(1) An investigation ordered by the Chief Executive for the purpose of section 10 of the Order shall be conducted by an investigating committee appointed by the Chief Executive.

(2) An investigating committee appointed pursuant to subsection (1) shall consist of 2 or more public servants who are senior to the officer who is the subject of the investigation.

7. Procedure for investigations

(1) An investigation ordered by the Chief Executive for the purpose of section 9 or 10 of the Order shall be conducted—

- (a) in accordance with the procedures as set out in this Regulation and the Schedule and any directions given by the Chief Executive under section 21(3) of the Order;
- (b) where the procedures in this Regulation and the Schedule cannot be applied, in accordance with such procedures as the investigating officer or the investigating committee, as the case may be, shall determine.

(2) The investigating officer or investigating committee shall, on the completion of investigation, make a report to the Chief Executive, which shall contain—

- (a) a record of the proceedings;
- (b) such findings of fact as the investigating officer or investigating committee may consider relevant; and
- (c) the opinion of the investigating officer or investigating committee as to whether or not the facts amount to misconduct.

8. Hearings

(1) The investigating officer or the chairman of an investigating committee, carrying out an investigation for the purpose of section 9 or 10 of the Order shall, by written notice to the officer—

- (a) require the officer to appear before the investigating officer or investigating committee at the time and place specified in the notice;
- (b) require the officer to produce at the time and place specified in the notice any witnesses and other evidence whom or which he wishes to present in his defence; and
- (c) inform the officer of the alleged misconduct in respect of which he is to be investigated.

(2) The officer, for the purpose of an investigation under section 9 or 10 of the Order, shall—

- (a) be entitled to know the whole case against him;
 - (b) be afforded an adequate opportunity of making his defence, either orally or in writing, as he may prefer;
 - (c) be given an adequate opportunity to question any witnesses.
- (3) The officer may be assisted in his defence by—
- (a) another public servant, other than a legally qualified officer, who may be a representative member of a staff association represented on the Senior Civil Service Council; or
 - (b) such other person as the Chief Executive may authorize.

(4) The investigating officer or investigating committee may enquire into any matter and admit and take into account any evidence or information which the investigating officer or investigating committee considers relevant, and shall not be bound by any rules of evidence.

(5) The enquiries should not be conducted with undue formality and while there is no standard practice which would be applicable to every case, it is emphasised that the investigating officer or investigating committee is not exercising a legal function, but rather ascertaining the facts.

(6) If an officer under investigation fails to attend as required by a notice issued under subsection (1), and at such other subsequent times and places as the investigating officer or investigating committee may require, orally or in writing, the investigation may continue in his absence and the provisions of subsection (2) shall be deemed to have been complied with.

(7) In this section, “Senior Civil Service Council” (高級公務員評議會) means the central consultative forum consisting of representatives from the Administration and representatives from staff associations namely the Hong Kong Chinese Civil Servants’ Association, the Senior Non-Expatriate Officers Association and the Association of Expatriate Civil Servants of Hong Kong.

9. Reference back

The Chief Executive may, after considering a report submitted by an investigating officer or investigating committee, without prejudice to his power to inflict punishment under section 9 or 10 of the Order—

- (a) require the investigating officer or investigating committee to make such further investigation as the Chief Executive may order; or
- (b) require the investigating officer or investigating committee to answer such questions or ascertain such facts as the Chief Executive may require.

10. Change of proceedings from section 9 to section 10 of the Order

If during or after an investigation for the purpose of section 9 of the Order, the Chief Executive considers that proceedings should be taken under section 10 of the Order, the Chief Executive may direct that the investigation under section 9 of the Order should be discontinued and that proceedings under section 10 of the Order should be instituted.

PART III

CATEGORY B AND OTHER OFFICERS

11. Disciplinary procedures applicable to Category B Officers

- (1) This Part applies to Category B Officers only.
- (2) Sections 12 to 14, in addition to applying to Category B Officers also apply to other public servants.

12. Service etc. of documents

Any notice or other document required to be served on or given to an officer in connection with any investigation into allegation of misconduct may be served or given by being—

- (a) given to him personally;
- (b) sent by registered post to his last known address; or
- (c) left at his last known address.

13. Officers charged with criminal offences

(1) An officer against whom criminal proceedings are being instituted shall forthwith report the fact to the Head of his Department. In the case of an officer who is himself the Head of Department, he shall report the proceedings to the Secretary.

(2) The Head of Department shall forthwith inform the Secretary of the institution of criminal proceedings against any officer of his department, unless the offence, in his opinion, is of a minor nature and—

- (a) does not reflect adversely on the character of the officer; and
- (b) is not likely to bring the public service into disrepute,

and in the period of 12 months immediately preceding the date of institution of criminal proceedings the officer has either not been convicted or been convicted once only of a similar offence.

14. Salary to be withheld on conviction

(1) Subject to subsection (5), the salary of an officer who is convicted of a criminal offence shall be withheld from the date of conviction—

- (a) if the officer has been sentenced to imprisonment, whether or not he lodges an appeal; or
- (b) if, in the opinion of the Secretary, the conviction may lead to the dismissal of the officer.

(2) An officer's Head of Department shall notify the Secretary of the result of any criminal proceedings taken against the officer.

(3) Subject to subsection (5), the Director of Accounting Services shall withhold the salary of an officer, pending further consideration of the officer's case, if the Secretary informs him—

- (a) that the officer has been sentenced to imprisonment; or
- (b) that the officer has been convicted of a criminal offence and that the conviction, in the opinion of the Secretary, may lead to dismissal of the officer.

(4) An officer whose salary has been withheld under this section shall cease to perform any duties of his office.

(5) An officer whose salary has been withheld under this section may be allowed to receive such portion of his salary as the Secretary shall think fit.

15. Disciplinary proceedings

(1) An officer to whom this section applies shall, with regard to disciplinary proceedings and matters connected therewith, be dealt with—

- (a) in accordance with the terms of any contract between the officer and the Government; and
- (b) insofar as the terms of such a contract do not so provide, in accordance with sections 7 to 18 of the Order and any regulations made by the Chief Executive in relation to such proceedings and matters.

(2) The Secretary may, either generally or as regards the particular case, modify the sections and regulations referred in subsection (1)(b).

16. Punishment

(1) The Secretary may impose any punishment on any officer to whom this section applies whose substantive salary is on or above point 14 on the Master Pay Scale or the nearest point thereto on any other salary scale.

(2) The Head of Department of an officer to whom this section applies whose substantive salary is below point 14 on the Master Pay Scale or the nearest point thereto on any other salary scale may impose any punishment on any such officer.

(3) The powers conferred on a Head of Department in subsection (2) may not be delegated without the approval in writing of the Secretary.

(4) In this section, “Head of Department” (部門首長) means Head of Grade in the case of an officer who is a member of a general grade.

17. Fines for minor offences committed by officers remunerated on the MOD 1 Pay Scale

(1) In addition to the powers conferred by section 16, a Head of Department may without formal investigation impose fines, for the following minor offences, on officers remunerated on the MOD 1 Pay Scale—

<u>Offence</u>	<u>Maximum fine</u>
Unpunctuality	An amount equivalent to half-day's salary

Absence without reasonable excuse	An amount equivalent to the salary normally due for the time of absence, not exceeding a total equivalent to two days' salary at any one time
Other minor disciplinary offences	An amount equivalent to half-day's salary

(2) If the amount of a fine imposed on an officer is not paid within 1 month from the date upon which a demand note for the amount is issued, the Head of Department may authorize its deduction from the officer's salary or from any other sums due from the Government to him or his estate.

(3) A Head of Department may delegate in writing the powers conferred by subsections (1) and (2) to such officers as may be approved by the Secretary.

18. Absence without leave; liability to dismissal

- (1) If an officer to whom this section applies—
- (a) is absent from duty without reasonable cause;
 - (b) wilfully refuses to perform his duty; or
 - (c) wilfully omits to perform his duty,

in such circumstances that the Secretary is satisfied that the officer has or has effectively vacated his post without permission, whether permanently or temporarily, the officer may be summarily dismissed by the Secretary with effect from the date of the beginning of his absence or of his wilful refusal or omission.

(2) The powers conferred on the Secretary by subsection (1) may be exercised, in the case of such an officer whose substantive salary is less than point 14 on the Master Pay Scale or on a point nearest thereto on any other salary scale, by the officer's Head of Department.

(3) The powers conferred on a Head of Department in subsection (2) may not be delegated without the approval in writing of the Secretary.

19. Certain officers excluded from the application of this Part

This Part does not apply to officers belonging to any bureau or department of the Government of HKSAR whose conduct is governed by any Ordinance.

SCHEDULE

[s. 7]

PART A

INVESTIGATIONS UNDER SECTION 9 OF THE ORDER

I

Preliminary

1. The officer alleged to have been guilty of misconduct ("the officer") shall be given—
 - (a) a copy of Part A of this Schedule; and
 - (b) a copy of any document which it is proposed to put in evidence to support the charge.
2. No document shall be put in evidence against the officer unless a copy has been given to him or he has had access to it.

II

Procedure

The following procedure shall be followed—

3. The investigating officer records—
 - (a) the attendance of any officer appointed by the Secretary to assist the investigating officer ("the assisting officer");
 - (b) the attendance of—
 - (i) a public servant who is not a legally qualified officer; or
 - (ii) other person authorized by the Chief Executive, to assist the officer in his defence ("the friend of the officer").
4. The investigating officer reads the charge.
5. The officer is informed—
 - (a) that he may admit or deny the whole or part of any charge;
 - (b) that he or the friend of the officer will have an opportunity of questioning any witness;
 - (c) that he may make an oral or written statement and call witnesses;
 - (d) that he or the friend of the officer will have an opportunity to address the investigating officer at the end of the proceedings.
6. Without prejudice to the power of the investigating officer to ask questions at any time during the investigation, the investigating officer may, after the officer has been informed of the matters referred to in paragraph 5, ask the officer whether he admits particular facts (for example, that he was a public servant at the material time, that photographs or other documents are accurate). Any such admission shall be recorded by the investigating officer.
7. The witnesses against the officer are called by the assisting officer and they are questioned by the assisting officer and the officer or the friend of the officer, and further questioned by the assisting officer.
8. The evidence of any witness may, at the discretion of the investigating officer, be taken by showing the witness a statement made by him, asking him whether it is correct and whether he wishes to alter any part of it or add to it. The statement shall then be admitted in evidence and any corrections noted on it by the investigating officer. The witness may then be questioned by the officer, or the friend of the officer, and thereafter further questioned by the assisting officer.

9. At the conclusion of the evidence in support of the charge, the officer is asked by the investigating officer if he wishes to make an oral or written statement in his defence. Any oral statement so made shall be recorded by the investigating officer. The officer may then be questioned by the assisting officer.
10. The witnesses for the officer are called by the officer and they are questioned by the officer or the friend of the officer and the assisting officer, and further questioned by the officer or the friend of the officer.
11. At the conclusion of the evidence—
 - (a) the assisting officer may address the investigating officer if the investigating officer so requests; and
 - (b) the officer or the friend of the officer shall have the right to address the investigating officer orally or in writing.
12. Thereafter the investigating officer prepares the report to be submitted to the Chief Executive. The investigating officer may add to his report recommendations regarding departmental procedures if he considers such recommendations to be warranted.

III

Miscellaneous

13. The evidence of witnesses shall not be taken on oath.
14. It is the function of the investigating officer to examine the charge and all the circumstances surrounding it thoroughly. For this purpose the investigating officer shall put such questions as he may think fit to the officer, any witness or the assisting officer.
15. The investigating officer may—
 - (a) call such witnesses; and
 - (b) require the production of such documents,as he thinks fit.
16. The investigating officer shall make a record of the proceedings and include it as part of the report which he is required to submit to the Chief Executive under this Regulation.
17. The investigating officer shall ensure that any evidence given in a language which the officer does not understand is interpreted to him. The investigating officer may record evidence in the language in which it is given or may record it in English or Chinese and shall certify it to be correct.
18. If during the investigation, further grounds of misconduct are disclosed, the investigating officer shall adjourn the proceedings and refer them to the Chief Executive. If the Chief Executive decides that an investigation into these grounds shall be carried out by the investigating officer, the officer shall be furnished with a written statement of the grounds and the procedure outlined in the foregoing paragraphs shall apply with such modifications as are necessary.
19. The investigating officer may—
 - (a) on his own motion; or
 - (b) at the request of the officer if the investigating officer considers it reasonable,adjourn the investigation for such period as he thinks fit.
20. The report of the investigating officer shall be sent to the Secretary who shall arrange for a copy of the report to be sent to the officer.

PART B**INVESTIGATIONS UNDER SECTION 10 OF THE ORDER****I****Preliminary**

1. The officer alleged to have been guilty of misconduct ("the officer") shall be given—
 - (a) a copy of Part B of this Schedule; and
 - (b) a copy of any document which it is proposed to put in evidence to support the charge.
2. No document shall be put in evidence against the officer unless a copy thereof has been given to him or he has had access thereto.

II**Procedure**

The following procedure shall be followed—

3. The investigating committee assembles and records—
 - (a) the attendance of any officer appointed by the Secretary to assist the investigating committee ("the assisting officer");
 - (b) the attendance of—
 - (i) a public servant who is not a legally qualified officer; or
 - (ii) other person authorized by the Chief Executive, to assist the officer in his defence ("the friend of the officer").
4. The Chairman of the investigating committee ("the Chairman") reads the charge.
5. The officer is informed—
 - (a) that he may admit or deny the whole or part of any charge;
 - (b) that he or the friend of the officer will have an opportunity of questioning any witness;
 - (c) that he may make an oral or written statement and call witnesses;
 - (d) that he or the friend of the officer will have an opportunity to address the investigating committee orally or in writing at the end of the proceedings.
6. Without prejudice to the power of the investigating committee to ask questions at any time during the investigation, the Chairman may, after the officer has been informed of the matters referred to in paragraph 5, ask the officer whether he admits particular facts (for example, that he was a public servant at the material time, that photographs or other documents are accurate). Any such admission shall be recorded by the Chairman.
7. The witnesses against the officer are called by the assisting officer and they are questioned by the assisting officer and the officer or the friend of the officer, and further questioned by the assisting officer.
8. The evidence of any witness may, at the discretion of the Chairman, be taken by showing the witness a statement made by him, asking him whether it is correct and whether he wishes to alter any part of it or add to it. The statement shall then be admitted in evidence and any corrections noted on it by the Chairman. The witness may then be questioned by the officer or the friend of the officer, and thereafter further questioned by the assisting officer.

9. At the conclusion of the evidence in support of the charge, the officer is asked by the Chairman if he wishes to make an oral or written statement in his defence. Any oral statement so made shall be recorded by the Chairman. The officer may then be questioned by the assisting officer.
10. The witnesses for the officer are called by the officer and they are questioned by the officer or the friend of the officer and the assisting officer, and further questioned by the officer or the friend of the officer.
11. At the conclusion of the evidence—
 - (a) the assisting officer may address the investigating committee if the investigating committee so requests; and
 - (b) the officer or the friend of the officer shall have the right to address the investigating committee orally or in writing.
12. Thereafter the investigating committee prepares the report to be submitted to the Chief Executive. The report is signed by the Chairman and each member of the investigating committee. If there is a difference of opinion, the Chairman and each member shall furnish separate reports. The investigating committee may add to its report or reports recommendations regarding departmental procedures if it considers such recommendations to be warranted.

III

Miscellaneous

13. The evidence of witnesses shall not be taken on oath.
14. It is the function of the investigating committee to examine the charge and all the circumstances surrounding it thoroughly. For this purpose the Chairman and the member of the investigating committee shall put such questions as they may think fit to the officer, any witness or the assisting officer.
15. The investigating committee may—
 - (a) call such witnesses; and
 - (b) require the production of such documents, as it thinks fit.
16. The investigating committee shall make a record of the proceedings and include it as part of the report or reports which it is required to submit to the Chief Executive under this Regulation.
17. The investigating committee shall ensure that any evidence given in a language which the officer does not understand is interpreted to him. The investigating committee may record evidence in the language in which it is given or may record it in English or Chinese and shall certify it to be correct.
18. If during the investigation further grounds of misconduct are disclosed, the investigating committee shall adjourn the proceedings and refer them to the Chief Executive. If the Chief Executive decides that an investigation into these grounds shall be carried out by the investigating committee, the officer shall be furnished with a written statement of the grounds and the procedure outlined in the foregoing paragraphs shall apply with such modifications as are necessary.
19. The investigating committee may—
 - (a) on its own motion; or
 - (b) at the request of the officer if the investigating committee considers it reasonable, adjourn the investigation for such period as it thinks fit.
20. The report or reports of the investigating committee shall be sent by the Chairman to the Secretary who shall arrange for a copy of the report or reports to be sent to the officer.