

in Part V empower the Commissioner of Police to make orders. Such orders provide instructions and directions to the police force and are relevant to its day-to-day running and operation.

Despite being categorised as ‘Miscellaneous Provisions’, Part VII of the Ordinance contained the more important sections relating to the police powers to stop, detain and arrest suspects and the power of search on persons and premises. As a result of the amendment brought about by the Police Force (Amendment) Ordinance 1992, s 54 provides the Hong Kong Police Force with a wider power to stop persons for the purpose of demanding proof of identity. However, the police officer nevertheless must have regard to relevant objective facts to support his subjective judgment suspicion before he could exercise his power under s 54: *Wong Tze Yam v Commissioner of Police and Another* [2009] 5 HKLRD 836. This section also carries with it a power to search.

Apart from the common law power of arrest arising out of situations of breach of the peace, s 50 empowers police officers to arrest without a warrant upon reasonable suspicion that a person has committed an offence for which the sentence is fixed by law, or an imprisonable offence. This section sets out the criteria under which an arrest is considered lawful and it serves to protect a citizen from arbitrary arrest. In particular, a police officer was authorised to search without a warrant the digital content of a mobile phone (or similar device) seized on arrest only in exigent circumstances: *Sham Wing Kan v Commissioner of Police* [2017] 6 HKC 265, [2017] 5 HKLRD 589.

Section 52 of the Ordinance stipulates that an arrested person detained in police custody must be brought before a magistrate ‘as soon as possible’, though there is no statutory limit on the length of time that the police may detain him without charge.

In fact, other legislation including the Public Order Ordinance (Cap 245), the Dangerous Drugs Ordinance (Cap 134) and the Firearms and Ammunition Ordinance (Cap 238) contain provisions relating to the police powers of stop and search of persons to ascertain if they have committed offences under those Ordinances. However, the Basic Law of Hong Kong and the Hong Kong Bill of Rights Ordinance (Cap 383) contain provisions for the protection of individual rights against unlawful interference and play a checking role on the police force against any abuse of powers. Provisions relating to any restriction on the fundamental rights to freedom and demonstration must be construed consistently with the Basic Law, the Hong Kong Bill of Rights Ordinance, and the common law’s requirement. There is an increasing number of cases which seek to challenge the police’s interference with citizens’ freedom of speech, freedom of peaceful assembly etc. These cases would be discussed in this edition of work.

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The law on policing faced a dramatic change in the United Kingdom when the Police and Criminal Evidence Act 1984 (PACE) was introduced and came into force in 1986. Since its implementation, other common law jurisdictions began to consider whether similar statutory reforms are required. PACE provides a comprehensive code of police powers and practices. It aims to put police powers on a proper statutory footing while striking a balance between police powers to enable police officers to maintain law and order satisfactorily and the rights of the suspects. It emphasised the concept of fairness and good practice.

The Law Reform Commission (LRC) of Hong Kong produced a ‘Report on Arrest’ in August 1992. The purpose of the LRC Report on Arrest was to examine the existing law and practices relating to the police powers of stop and search, powers of entry, search and seizure, powers of arrest and detention; and to make recommendations as to whether all or any of the relevant provisions in the PACE should be adopted or modified for local application.

In 1993, an Inter-departmental Working Group on the LRC Report on Arrest was set up to study the LRC’s recommendations. The Working Group was chaired by the then Security Branch and comprised representations of the Legal Enforcement Agencies concerned and the then Legal Department. The 1993 Working Group accepted most of the recommendations put forward by the LRC. It was decided that the recommendations/proposals accepted by the Working Group be implemented in a phased manner.

The LRC Report had recommended inter alia the adoption of provisions in the PACE relating to the taking of intimate and non-intimate samples from suspects for the investigation of crime. As a result, on 1 July 2001, the Dangerous Drugs, ICAC and Police Force (Amendment) Ordinance came into operation and the provisions in ss 59A–59I are added.

As at July 2007, of the 52 proposals accepted by the Working Group, 28 had been implemented through administrative or legislative means and 24 were considered outstanding. In November 2008, the Interdepartmental Working Group was reactivated to discuss the outstanding action arising from the LRC Report on Arrest and to draw up drafting instructions for necessary legislative amendments.

The main provisions of the present Ordinance are as follows:

- Duties of the police force (s 10)
- Appointment, promotion, resignation and dismissal of police officers (ss 13–17, 23, 25, 31)
- Management of Police Welfare Fund (ss 39B–39E)
- Power to make police regulations (s 45)
- Power to make police orders (ss 46, 47)
- Power of arrest and detention of persons (ss 50, 53)
- Power of stop, detain and search (ss 54, 55)
- Power to take fingerprints and photographs of arrested person (s 59)
- Power to take intimate samples from arrested persons (s 59A)
- Power to take non-intimate samples from arrested persons (s 59C)

## PART I

## PRELIMINARY

**1. Short title**

This Ordinance may be cited as the Police Force Ordinance.

**2. Application**

All the provisions of this Ordinance shall apply to all persons who, at the commencement of this Ordinance, are serving in the police force established under any Ordinance repealed by this Ordinance and service under any such repealed Ordinance shall for the purpose of pay, allowances, gratuities and pensions, be deemed to be service under this Ordinance.

**[2.01] General note**

This section provides for the extent of application of this Ordinance.

**[2.02] Persons**

The word 'person' includes, in its ordinary meaning, any public body and any body of persons, corporate or unincorporated, and this definition shall apply notwithstanding that the word 'person' occurs in a provision creating or relating to an offence or for the recovery of any fine or compensation as provided: see s 3 of the Interpretation & General Clauses Ordinance (Cap 1).

**[2.03] Police force**

The 'police force' is a disciplined force under the supreme direction of the Commissioner of Police: *Fu Kin Chi v Secretary for Justice* [1998] 1 HKC 411, [1998] 1 HKLRD 271, at 279J.

The 'police force' of Hong Kong shall consist of such gazetted police officers, inspectors, non-commissioned officers and constables as shall by annual vote or otherwise be from time to time provided for by the Chief Executive and the Legislative Council. See s 11 (Cap 232) & *Halsbury's Laws of Hong Kong* (2nd Edn) Vol 42 on Police and Emergency Services [300.044].

For structure of the 'police force', see *Halsbury's Laws of Hong Kong* (2nd Edn) Vol 42 on Police and Emergency Services [300.034]–[300.039].

In *R v District Judge of Hong Kong ex parte the Attorney General v Ho Kwong Hung & Anor* [1958] 2 HKLR 174, [1958] HKCU 24, the 'police force' was held to be a public body within the meaning of s 3(1) of the Prevention of

Corruption Ordinance concerned with the unlawful possession by a person of dutiable liquor.

**[2.04] Deemed to be service**

The word 'deemed' means 'to be treated as'. See *Osborn's Concise Law Dictionary* (9th Ed, Sweet & Maxwell, 2001, London) p 127.

'Service' is defined as 'the relationship of a servant to his master'. See *Osborn's Concise Law Dictionary*, 9th Ed, London Sweet & Maxwell 2001, at p 348. In feudal times, and still as regards copyholds, 'service' is that service which the tenant, by reason for his fee, oweth unto his lord (Cowel). See *Stroud's Judicial Dictionary of Words & Phrases* (6th Ed, Sweet & Maxwell, 2000, London) Vol 3: Q-Z at p 2408.

To satisfy the requirements of a 'contract of service' within the meaning of the National Insurance Act 1965 (c 51), ss 1(2)(a) & 114 the following three conditions must be fulfilled:

1. the servant agrees that in consideration of a wage or other remuneration he will provide his own work and skill in performance of some service for his master and
2. he agrees, expressly or impliedly, that in the performance of that service he will be subject to the others control in sufficient degree to make that other master and
3. the other provisions of the contract are consistent with its being a contract of service (*Ready Mixed Concrete (South East) v Minister of Pensions & National Insurance* [1968] 2 QB 497).

See *Stroud's Judicial Dictionary of Words & Phrases* (6th Ed, Sweet & Maxwell, 2000, London) Vol 1 : A-F, pp 522 & 523.

Under s 3 of the Interpretation & General Clauses Ordinance (Cap 1), a 'public servant' has the same meaning as 'public officer' and is therefore 'any person holding an office of emolument under the Government, whether such office be permanent or temporary'.

**[2.05] Pay, allowances, gratuities and pensions**

Under s 2 of the Public Officers Pay Adjustments (2004/2005) Ordinance (Cap 580), 'allowance' means 'any remuneration, other than pay, payable to a public officer' whereas 'pay' means 'remuneration payable to a public officer as salary, wages, a consultancy fee, a training allowance or an honorarium'.

Under s 2 of the Pension Benefits Ordinance (Cap 99), 'death gratuity' means 'a death gratuity payable under s 20' whereas 'short service gratuity' means 'a short service gratuity granted to an officer under s 32'.

According to s 2 of the Pension Benefits Ordinance (Cap 99), 'pension' means 'any pension or deferred pension (other than an additional pension or a dependant pension) granted, payable or paid under this Ordinance (Cap 99)'.

**3. Interpretation**

In this Ordinance, unless the context otherwise requires—

**appropriate consent** (適當的同意) means—

- (a) in relation to a person who has attained the age of 18 years, the consent of that person;
- (b) in relation to a person who has not attained the age of 18 years, the consent both of that person and of his parent or guardian;

(Added 68 of 2000 s 5)

**auxiliary force** (輔警隊) means the Hong Kong Auxiliary Police Force established under the Hong Kong Auxiliary Police Force Ordinance (Cap 233);

(Added 58 of 1999 s 3; Amended 14 of 2002 s 3)

**auxiliary officer** (輔警人員) means a member of the auxiliary force;

(Added 58 of 1999 s 3)

**civil service provident fund scheme** (公務員公積金計劃) means the Civil Service Provident Fund Scheme referred to in the government regulations;

(Added 6 of 2009 s 5)

**Commissioner** (處長) means the Commissioner of Police of Hong Kong or a deputy commissioner;

(Replaced 13 of 1953 s 2. Amended 76 of 1999 s 3)

**DNA** means deoxyribonucleic acid;

(Added 68 of 2000 s 5)

**DNA information** (DNA 資料) means genetic information derived from the forensic DNA analysis of an intimate sample or a non-intimate sample;

(Added 68 of 2000 s 5)

**gazetted police officer** (憲委級警務人員) includes officers of all ranks from and including the Commissioner down to and including superintendent;

(Amended 37 of 1974 s 2)

**government regulations** (政府規例) means the administrative rules known as the Government Regulations and any other administrative rules or instruments regulating the public service;

(Added 76 of 1999 s 3)

**Independent Commission Against Corruption** (廉政公署) means the Independent Commission Against Corruption established under section 3 of the Independent Commission Against Corruption Ordinance (Cap 204);

(Added 68 of 2000 s 5; Amended 1 of 2003 s 3)

**inspector** (督察) means an inspector of police of whatever grade or rank;

**intimate sample** (體內樣本) means—

- (a) a sample of blood, semen or any other tissue fluid, urine or hair other than head hair;
- (b) a dental impression;
- (c) a swab taken from a private part of a person's body or from a person's body orifice other than the mouth;

(Added 68 of 2000 s 5)

**non-commissioned officer** (非委任級人員) means a police officer below the rank of inspector down to and including sergeant and also means detectives of corresponding ranks;

(Amended 42 of 1977 s 2)

**non-intimate sample** (非體內樣本) means—

- (a) a sample of head hair;
- (b) a sample taken from a nail or from under a nail;
- (c) a swab taken from any part, other than a private part, of a person's body or from the mouth but not any other body orifice;
- (d) saliva;
- (e) an impression of any part of a person's body other than—
  - (i) an impression of a private part;
  - (ii) an impression of the face; or
  - (iii) the identifying particulars described in section 59(6);

(Added 68 of 2000 s 5)

**police constable** or **constable** (警員) means a police officer under the rank of sergeant and also means detective police constable or detective constable;

(Amended 42 of 1977 s 2)

**police officer** (警務人員) includes any member of the police force;

(Amended 37 of 1974 s 2; 58 of 1999 s 3)

**police regulations** (警察規例) means regulations made in exercise of the powers conferred by section 45 and any regulations continued or continuing in force upon the enactment of this Ordinance;

**Police Welfare Fund** (警察福利基金) means the Police Welfare Fund continued by section 39B;

(Replaced 58 of 1999 s 3)

**private part** (私處) in relation to a person's body, means the genital or anal area and includes the breasts in the case of a woman;

(Added 68 of 2000 s 5)

**provident fund benefits** (公積金利益) in relation to a person, means the part of that person's beneficial interests in the civil service provident fund scheme that is attributable to sums derived from the voluntary contributions made by the Government, as employer, in respect of that person under section 11(4) of the Mandatory Provident Fund Schemes Ordinance (Cap 485), together with the income, profits or losses arising from any investment of those sums and of such income or profits;

(Added 6 of 2009 s 5)

**Public Service (Administration) Order** (《公務人員(管理)命令》) means—

- (a) the Public Service (Administration) Order 1997 (Executive Order No. 1 of 1997);
- (b) the Public Service (Disciplinary) Regulation made under section 21 of that Order (and together with that Order published as SS No 5 to Gazette No 2/1997); and
- (c) any other regulation made or any direction given under that Order,  
as amended from time to time.

(Added 76 of 1999 s 3)

**registered dentist** (註冊牙醫) has the same meaning as it has in the Dentist Registration Ordinance (Cap 156);

(Added 68 of 2000 s 5)

**retirement benefits** (退休福利), in relation to a person, means—

- (a) the pension, gratuity or other allowance of that person as provided for under the Pensions Ordinance (Cap 89);
- (b) the pension benefits of that person as provided for under the Pension Benefits Ordinance (Cap 99); or
- (c) the provident fund benefits of that person;

(Added 6 of 2009 s 5)

**serious arrestable offence** (嚴重的可逮捕罪行) means—

- (a) an offence for which a person may under or by virtue of any law be sentenced to imprisonment for a term not less than 7 years; or
- (b) any other offence specified in Schedule 2.

(Added 68 of 2000 s 5)

(Amended 29 of 1950 s 2; 42 of 1977 s 2; 58 of 1999 s 3)

### [3.01] Enactment history

The definition of 'appropriate consent' was added pursuant to s 5 of the Dangerous Drugs, Independent Commission against Corruption and Police Force (Amendment) Ordinance (68 of 2000), commencing 1 July 2001.

The definitions of 'auxiliary force' and 'auxiliary officer' were added pursuant to s 3 of the Disciplined Services Welfare Funds Legislation (Amendment) Ordinance (58 of 1999), commencing 19 November 1999, and the definition of 'auxiliary force' was subsequently amended under s 3 of the Adaptation of Laws (Miscellaneous Provisions) Ordinance (14 of 2002), commencing 1 July 1997, by repealing 'Royal'.

The definition of 'civil service provident fund (CSPF) scheme' was added pursuant to s 5 of the Disciplined Services Legislation (Miscellaneous Amendments) Ordinance (6 of 2009), commencing 31 March 2010.

Pursuant to s 2 of the Police Force (Amendment) Ordinance (13 of 1953), commencing 12 June 1953, the definition of 'Commissioner' was amended by the deletion of the definition 'Commissioner' and the substitution therefore of the following - 'Commissioner' means the Commissioner of Police of the Colony or a deputy commissioner'. The same definition was amended under s 3 of the Adaptation of Laws (No 33) Ordinance (76 of 1999), commencing 1 July 1997, by repealing 'the Colony' and substituting 'Hong Kong'.

The definitions of 'DNA' and 'DNA information' were added pursuant to s 5 of the Dangerous Drugs, Independent Commission against Corruption and Police Force (Amendment) Ordinance (68 of 2000), commencing 1 July 2001.

The definition of 'gazetted police officer' was amended by deleting 'police cadet' and substituting 'superintendent', pursuant to s 2 of the Police Force (Amendment) Ordinance (37 of 1974), commencing 5 July 1974.

[3.01]

The definition of 'government regulations' was added pursuant to s 3 of the Adaptation of Laws (No 33) Ordinance (76 of 1999), commencing 1 July 1997.

The definition of 'Independent Commission Against Corruption' was added pursuant to s 5 of the Dangerous Drugs, Independent Commission against Corruption and Police Force (Amendment) Ordinance (68 of 2000), commencing 1 July 2001, and subsequently amended pursuant to s 3 of the Adaptation of Laws Ordinance (1 of 2003), commencing 1 July 1997, by repealing '總督特派廉政專員公署' and substituting '廉政公署'.

The definitions of 'intimate sample' and 'non-intimate sample' were added pursuant to s 5 of the Dangerous Drugs, Independent Commission against Corruption and Police Force (Amendment) Ordinance (68 of 2000), commencing 1 July 2001.

Pursuant to s 3 of the Police Force (Amendment) Ordinance (42 of 1977), commencing 1 September 1977, the definition of 'non-commissioned officer' was amended by deleting 'corporal' and substituting 'sergeant' whereas the definition of 'police constable' or 'constable' was also amended by deleting 'corporal' and substituting 'sergeant'.

The definition of 'police officer' was first amended, pursuant to s 2 of the Police Force (Amendment) Ordinance (37 of 1974), commencing 5 July 1974, by inserting, after 'police force', the following: ', but does not include a police cadet' and further amended, pursuant to s 3 of the Disciplined Services Welfare Funds Legislation (Amendment) Ordinance (58 of 1999), commencing 19 November 1999, by repealing ', but does not include a police cadet'.

The definition of 'Police Welfare Fund' was replaced pursuant to s 3 of the Disciplined Services Welfare Funds Legislation (Amendment) Ordinance (58 of 1999), commencing 19 November 1999.

The definition of 'private part' was added pursuant to s 5 of the Dangerous Drugs, Independent Commission against Corruption and Police Force (Amendment) Ordinance (68 of 2000), commencing 1 July 2001.

The definitions of 'provident fund benefits' were added pursuant to s 5 of the Disciplined Services Legislation (Miscellaneous Amendments) Ordinance (6 of 2009), commencing 31 March 2010.

The definition of 'Public Service (Administrative) Order' was added pursuant to s 3 of the Adaptation of Laws (No 33) Ordinance (76 of 1999), commencing 1 July 1997.

The definitions of 'retirement benefits' were added pursuant to s 5 of the Disciplined Services Legislation (Miscellaneous Amendments) Ordinance (6 of 2009), commencing 31 March 2010.

The definition of 'serious arrestable offence' was added pursuant to s 5 of the Dangerous Drugs, Independent Commission against Corruption and Police Force (Amendment) Ordinance (68 of 2000), commencing 1 July 2001.

Pursuant to s 2 of the Police Force (Amendment) Ordinance (29 of 1950), commencing 1 September 1950, the definition of 'special constable' was deleted

[4.03]

and the definitions of 'appropriate tribunal' and 'police cadet' were added.

Pursuant to s 2 of the Police Force (Amendment) Ordinance (42 of 1977), commencing 1 September 1977, the definitions of 'appropriate tribunal' and of 'commanding officer' or 'officer commanding' were deleted.

The definition of 'police cadet' was repealed by s 3 of the Disciplined Services Welfare Funds Legislation (Amendment) Ordinance (58 of 1999), commencing 19 November 1999.

#### [3.02] General note

In 2001, certain definitions of terms were added pursuant to s 5 of the Dangerous Drugs, Independent Commission against Corruption and Police Force (Amendment) Ordinance (68 of 2000).

In 2010, pursuant to s 5 of the Disciplined Services Legislation (Miscellaneous Amendments) Ordinance (6 of 2009), a number of definitions of new terms were added in respect of reference to the retirement benefits under the CSPF Scheme.

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### 4. Administration of police force by Commissioner

The Commissioner, subject to the orders and control of the Chief Executive, shall be charged with the supreme direction and administration of the police force.

(Amended 76 of 1999 s 3)

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#### [4.01] Enactment history

Under s 3 of the Adaptation of Laws (No 33) Ordinance (76 of 1999), commencing 1 July 1997, this section was amended by repealing 'Governor' and substituting 'Chief Executive'.

#### [4.02] General note

By virtue of this section, the direction and control of the Hong Kong Police Force is vested in the Commissioner of Police who is responsible to the Chief Executive for the administration and the operational efficiency of the police force. Subject to the orders and control of the Chief Executive, the Commissioner of Police is charged with the supreme direction and administration of the police force. See *Halsbury's Laws of Hong Kong* (2nd Edn) Vol 42 on Police and Emergency Services [300.024].

#### [4.03] Commissioner

Under the Interpretation section (s 3) of this Ordinance, 'Commissioner' means the Commissioner of Police of Hong Kong or a deputy commissioner. See

*Halsbury's Laws of Hong Kong* (2nd Edn) Vol 42 on Police and Emergency Services [300.024].

#### [4.04] Chief Executive

Under s 3 of the Interpretation & General Clauses Ordinance, Cap 1, 'Chief Executive' means:

- (a) the Chief Executive of the Hong Kong Special Administrative Region;
- (b) a person for the time being assuming the duties of the Chief Executive according to the provisions of Article 53 of the Basic Law.

#### [4.05] Supreme direction and administration of

'Supreme' means the highest in authority or rank; holding the highest place in authority or power. See *The Oxford English Dictionary* (2nd Ed, Clarendon Press Oxford, 1989), Vol XVII, p 274.

'Direction' means keeping in right order; management, administration. See *The Oxford English Dictionary* (2nd Ed, Clarendon Press Oxford, 1989), Vol V, p 704.

'Administration' means management. See *The Oxford English Dictionary* (2nd Ed, Clarendon Press Oxford, 1989), Vol I, p 163.

#### [4.06] Police force

See [2.03].

#### [4.07] Provident fund scheme

Under s 2 of the Mandatory Provident Fund Schemes Ordinance (Cap 485), 'provident fund scheme' means a scheme governed by a trust:

- (a) the terms of which are set out in one or more documents; and
- (b) that—
  - (i) provides for the payment of pecuniary benefits to the members of the scheme when they reach the retirement age, or any other prescribed event occurs in relation to them; or
  - (ii) in the case of members who die before reaching that age or before the occurrence of such an event, provides for the payment of those benefits to the personal representatives or beneficiaries of the estates of those members.

### 5. Powers of Commissioner or deputy

The Commissioner or a deputy commissioner may exercise and perform any of the powers conferred or duties imposed by law on a police officer.

#### [5.01] General note

The Commissioner of Police or a Deputy Commissioner of Police may exercise and perform any of the duties or powers conferred on a police officer.

#### [5.02] Commissioner

See [4.03].

#### [5.03] Deputy commissioner

'Commissioner' includes a deputy commissioner. A deputy commissioner may exercise all the powers and duties of the Commissioner unless there is any legislative enactment to the contrary and subject to any special instruction from the Commissioner (s 7(1) Cap 232). A deputy commissioner may also exercise and perform any of the duties or powers conferred on a police officer. See *Halsbury's Laws of Hong Kong* (2nd Edn) Vol 42 on Police and Emergency Services [300.025].

#### [5.04] Powers conferred or duties imposed by law

Under s 3 of the Interpretation & General Clauses Ordinance (Cap 1), 'power' includes any privilege, authority and discretion. Powers conferred on a police officer include power of arrest and power to stop, detain and search. See ss 50, 54 (Cap 232). For duties of a police officer, see s 10 (Cap 232).

#### [5.05] Police officer

According to the Interpretation section (s 3) of this Ordinance, 'police officer' includes any member of the police force apart from a police cadet. See *Halsbury's Laws of Hong Kong* (2nd Edn) Vol 42 on Police and Emergency Services [300.044]. Police officers in Hong Kong are employees of the Government. See *Fung Yiu Bun v Commissioner of Police* HCAL 2350/2001, 30/05/2002, at para 16.

### 6. Powers, etc to be subject to regulations, etc

All powers granted to and duties imposed by law on any police officer shall be exercised or performed in accordance with police regulations and police orders made under this Ordinance.

**[23.04] Discharged**

'Discharge' means release from an obligation, debt, or liability eg discharge of contract. 'Discharge of contract' means 'the termination of a contractual obligation'. See *Oxford Dictionary of Law*, (5th Ed, Oxford University Press, 2002) p 152.

**[23.05] Commissioner**

See [4.03].

**[23.06] Resign**

'Resign' means to 'relinquish, surrender, give up, or hand over an office or a position'. See *The Oxford English Dictionary* (2nd Ed, Clarendon Press Oxford, 1989) Vol XIII, p 712.

**[23.07] Treasury**

See [13.07].

**[23.08] In the best interests of**

'In the interests of' means on the side of what is advantageous or beneficial to. See *The Oxford English Dictionary* (2nd Ed, Clarendon Press Oxford, 1989) Vol VII, p 1099.

**24. Temporary police officers**

- (1) The Commissioner may without written engagement employ persons to serve temporarily as police officers.
- (2) A temporary police officer shall be deemed to serve from month to month, every such engagement being held to commence on the first and to be determinable on the last day of each successive month, but notwithstanding the terms of such engagement such police officer shall serve under the same conditions of service in respect of pay, allowances, gratuities and pensions as an auxiliary officer of equivalent rank, and shall have and may exercise all the powers and privileges of such rank and be liable to all the provisions of discipline for such rank while so serving.

*(Amended 2 of 1959 Second Schedule; 29 of 1969 s 2; LN 362 of 199758 of 1999 s 3)*

- (3) A temporary police officer may be discharged at any time after 1 month's notice in writing or may resign upon giving the

Commissioner 1 month's notice in writing or, with the prior consent of the Commissioner, by paying into the Treasury 1 month's salary in lieu of notice.

*(Amended 13 of 1953 s 5)*

*(Replaced 29 of 1950 s 8)*

**[24.01] Enactment history**

Section 24 of the principal Ordinance was repealed and replaced by this section, pursuant to s 8 of the Police Force (Amendment) Ordinance (29 of 1950), commencing 1 September 1950.

Under the Second Schedule to the Hong Kong Auxiliary Police Force Ordinance (2 of 1959), commencing 30 January 1959, subsection (2) was amended by deletion of the words 'police reserve constituted under the Police Reserve Ordinance' and the substitution therefor of the words 'Hong Kong Auxiliary Police Force'.

Subsection (2) was then further amended in that, pursuant to the Police Force (Change of Title) Ordinance (29 of 1969), commencing 20 June 1969, any reference to the 'Hong Kong Auxiliary Police Force' shall be read respectively as reference to the 'Royal Hong Kong Auxiliary Police Force'.

By virtue of the Declaration of Change of Titles (General Adaptation) Notice 1997 (LN 362 of 1997), commencing 1 July 1997, the title 'Royal Hong Kong Auxiliary Police Force' shall be changed to 'Hong Kong Auxiliary Police Force'.

Pursuant to s 3 of the Disciplined Services Welfare Funds Legislation (Amendment) Ordinance (58 of 1999), commencing 19 November 1999, s 24(2) was amended by repealing 'a police officer of equivalent rank in the Hong Kong Auxiliary Police Force' and substituting 'an auxiliary officer of equivalent rank'.

**[24.02] General note**

By virtue of this section, the Commissioner of Police may employ temporary police officers.

**[24.03] Commissioner**

See [4.03].

**[24.04] Without written engagement**

'Without written engagement' means without having entered into any written contract.

**[24.05] Police officers**

See [5.05].

**[24.06] Temporary police officers**

'Temporary police officers' are police officers employed by the Commissioner of Police without written engagement on a temporary basis.

**[24.07] Pay, allowances, gratuities and pensions**

See [2.05].

**[24.08] Auxiliary officer**

Under the Interpretation section (s 3) of this Ordinance, 'auxiliary officer' means a member of the Hong Kong Auxiliary Police Force established under the Hong Kong Auxiliary Police Force Ordinance (Cap 233). Auxiliary officers are distinct from police officers (see s 3, 39 and 39E of this Ordinance, the former have no right to represent a defaulter in disciplinary proceedings pursuant to Reg 9(11) of the Police (Discipline) Regulations (Cap 232A). See 何建民 訴 香港警務處陳健雄警司及另四人 (unreported, CACV 145/2005, 31 August 2005) at paras 56-57.

**[24.09] Treasury**

See [13.07].

**25. Discharge and resignation of inspector**

- (1) Without prejudice to the provisions of section 38, the Commissioner may at any time prior to the confirmation in his appointment of an inspector discharge an inspector from the police force by giving him 3 months' notice in writing or paying to him 1 month's salary in lieu of notice:

Provided that where such inspector was serving as a constable or non-commissioned officer immediately prior to his appointment as an inspector, he shall not be discharged under the provisions of this subsection, but the Commissioner may, at any time prior to the confirmation of such inspector as aforesaid, revert him to the rank which he held immediately before his appointment as inspector.

*(Added 13 of 1953 s 6; Amended 12 of 1982 s 5)*

- (2) An inspector may resign from the police force by giving to the Commissioner 3' notice in writing of his intention to

resign or, with the prior consent of the Commissioner, by paying into the Treasury 1 month's salary in lieu of notice:

*(Amended 13 of 1953 s 6)*

Provided that the Commissioner may, on compassionate grounds or where he considers it to be in the best interests of the police force, accept a shorter period of notice or the payment of a lesser amount of salary in lieu of notice.

*(Added 12 of 1982 s 5)*

*(Replaced 29 of 1950 s 9)*

**[25.01] Enactment history**

Under s 9 of the Police Force (Amendment) Ordinance (29 of 1950), commencing 1 September 1950, ss 25 and 26 of the principal Ordinance were repealed and replaced by this section.

The proviso to subsection (1) was first added, by virtue of s 6 of the Police Force (Amendment) Ordinance (13 of 1953), commencing 12 June 1953, and subsequently amended by deleting 'has completed 10 years' service as a police officer' and substituting the following— 'was serving as a constable or non-commissioned officer immediately prior to his appointment as an inspector', pursuant to s 5 of the Police Force (Amendment) Ordinance (12 of 1982), commencing 12 March 1982.

Pursuant to s 6 of the 2, commencing 12 June 1953, subsection (2) was amended by the deletion of the words 'or paying into the Treasury 1 month's salary in lieu of notice and notifying the Commissioner that he has resigned' and the substitution therefore of the following— 'or, with the prior consent of the Commissioner, by paying into the Treasury 1 month's salary in lieu of notice'.

The proviso to subsection (2) was added pursuant to s 5 of the Police Force (Amendment) Ordinance (12 of 1982), commencing 12 March 1982.

**[25.02] General note**

In relation to discharge from the police force, without prejudice to the power of the Government to dismiss or terminate the appointment of a police officer without compensation, the Commissioner of Police may from time to time prior to the confirmation in his appointment of an inspector discharge the inspector from the police force by giving him 3 months' notice in writing or paying him 1 month's salary in lieu of notice: subsection (1).

See *Halsbury's Laws of Hong Kong* (2nd Edn) Vol 42 on Police and Emergency Services [300.049].

The rules of natural justice have by necessary implication been excluded from subsection (1) since the Ordinance differentiates between dismissals which are for cause and those which are by way of advance written notice and/or payment



[25.03]

of salary in lieu of notice. In relation to the latter type, (1) the powers are similar to those of employers to terminate the employment of employees under common law or statute; (b) the provisions apply only to police officers who are, inter alia, on probation; and (c) in each case, there is a corresponding right on the part of the police officers to resign by advance notice and/or payment in lieu of notice. Subsection (1) only requires advance written notice be given or payment of salary in lieu thereof be made before terminating the service. See *Fung Yiu Bun v Commissioner of Police* [2002] 4 HKC 15 at 16A-C.

Apparently, this section does not confer a right to be heard. See *Khan v Attorney General* [1977-1979] 1 HKC 63, where a corporal who was promoted to the rank of inspector to serve a trial period of 3 years in that rank and eventually ordered to revert to his substantive rank did not have an opportunity to be heard.

In *Fung Yiu Bun v Commissioner of Police* (above), a police inspector on probation applied for judicial review of the decision to terminate his service with the police force. It was held, at 15I, that merely because the power to dismiss had a statutory origin (in s 25(1) Cap 232), did not automatically entitle the inspector to ask for judicial review.

Under subsection (2), an inspector may resign by giving the Commissioner of Police three months' notice in writing of his intention to resign or, with the prior consent of the Commissioner, by paying into the Treasury one month's salary in lieu of notice. The Commissioner of Police may, on compassionate grounds or where he considers it to be in the best interests of the police force, accept a shorter period of notice or the payment of a lesser amount of salary in lieu of notice.

See *Halsbury's Laws of Hong Kong* (2nd Edn) Vol 42 on Police and Emergency Services [300.048].

#### [25.03] Commissioner

See [4.03].

#### [25.04] Inspector

See [11.05].

#### [25.05] Discharge

See [23.04].

#### [25.06] Resign

See [23.06].

#### [25.07] Treasury

See [13.07].

#### [25.08] In the best interests of

See [23.08].

### 26. Declaration of office

Every police officer shall, before entering on the duties of his office, take before a magistrate or gazetted police officer an oath or declaration of office in the form prescribed in Schedule 1.

(Amended 11 of 1968 Schedule; 47 of 1997 s 10; 68 of 2000 s 6)

#### [26.01] Enactment history

Following the Schedule to the Justices of the Peace (Miscellaneous Amendments) Ordinance (11 of 1968), commencing 15 March 1968, this section was amended by deleting 'or justice of the peace' and substituting ', justice of the peace or gazetted police officer'.

In this section, 'justice of the peace' was repealed pursuant to s 10 of the Justices of the Peace Ordinance (47 of 1997), commencing 30 May 1997.

This section was amended by repealing 'the Schedule' and substituting 'Schedule 1', pursuant to s 6 of the Dangerous Drugs, Independent Commission Against Corruption and Police Force (Amendment) Ordinance (68 of 2000), commencing 1 July 2001.

#### [26.02] General note

Before entering on the duties of a police officer, every officer must take an oath or declaration of office which is now in the following form:

'I will well and faithfully serve the Government of the Hong Kong Special Administrative Region according to law as a police officer, that I will obey uphold and maintain the laws of the Hong Kong Special Administrative Region, that I will execute the powers and duties of my office honestly, faithfully and diligently without fear or favour to any person and with malice or ill-will toward none, and that I will obey without question all lawful orders of those set in authority over me.'

See *Fu Kin Chi Willy v Secretary for Justice* [1998] 1 HKC 411, [1998] 1 HKLRD 271 at 280A-C.

### 27. Delivery of Government property on leaving the force

(1) Every police officer who by resignation, dismissal, discharge or otherwise leaves the police force, shall before leaving deliver up each and every article of uniform, clothing, arms,

[27.01]

accoutrements and other Government property which may be in his possession.

- (2) Any person neglecting so to deliver up such property shall be liable on summary conviction to a fine of \$100 or to imprisonment for 3 months, and in addition thereto shall be liable to pay the value of the property not delivered up which value shall be ascertained by such magistrate in a summary way and shall be recoverable as a fine.

#### [27.01] General note

Every police officer who leaves the police force by resignation, dismissal, discharge or otherwise, must before leaving deliver up each and every article of uniform, clothing, arms, accoutrements and other Government property which may be in his possession. Failure to do so is an offence for which such person is liable on summary conviction to a fine at level 1 or 3 months imprisonment and in addition he will be liable to pay the value of the property not delivered up which value will be ascertained by such magistrate in a summary way and is recoverable as a fine. See *Halsbury's Laws of Hong Kong* (2nd Edn) Vol 42 on Police and Emergency Services at [300.063].

#### [27.02] Police officer

See [5.05].

#### [27.03] By resignation, dismissal, discharge or otherwise

For the definition of 'resign', see [23.06]. For the definition of 'dismiss', see [15.04]. For the definition of 'discharge', see [23.04].

#### [27.04] Deliver up

'Deliver (up)' means 'to give up entirely, give over, surrender, yield'. See *The Oxford English Dictionary* (2nd Ed, Clarendon Press Oxford, 1989) Vol IV, p 422.

#### [27.05] Uniform, clothing, arms, accoutrements...Government property

For the definition of 'Uniform', see [22.03]. 'Clothing' means 'clothes collectively, apparel, dress'. See *The Oxford English Dictionary* (2nd Ed, Clarendon Press Oxford, 1989) Vol III, p 356.

Under s 2 of the Firearms and Ammunition Ordinance (Cap 238), 'arms' means—

- (a) any firearm;
- (b) an air rifle, air gun or air pistol from which any shot, bullet or missile can be discharged with a muzzle energy greater than 2 joules;

[27.06]

- (c) any portable device which is designed or adapted to stun or disable a person by means of an electric shock applied either with or without direct contact with that person;
- (d) any gun, pistol or other propelling or releasing instrument from or by which a projectile containing any gas or chemical could be discharged;
- (e) any weapon for the discharge of any noxious liquid, gas, powder or other similar thing (including an aerosol containing any noxious liquid, gas, powder or other similar thing which is not in general trade or domestic use in aerosol form);
- (f) any harpoon or spear gun, however powered;
- (g) any other thing declared by the Chief Executive in Council in regulations made under section 52 to be within the definition of 'arms' for the purpose of this Ordinance; (Amended 13 of 1999 s 3)
- (h) a component part used or intended to be used for the discharge of a missile from any of the arms coming within the foregoing paragraphs, and any accessory to such arms designed or adapted to diminish the noise or flash caused by firing the same,

but does not include—

- (i) any 'cartridge-operated fixing tool' as defined in regulations relating thereto made under the Factories and Industrial Undertakings Ordinance (Cap 59);
- (ii) any slingshot, catapult, bow or other similar weapon,

unless the same is included by virtue of regulations referred to in paragraph (g).

'Accoutrements' means apparel, outfit, equipment. 'Accoutrements' are clothes, trappings, equipments; the equipments of a soldier other than arms and dress. See *The Oxford English Dictionary* (2nd Ed, Clarendon Press Oxford, 1989) Vol I, p 88.

According to s 3 of the Interpretation & General Clauses Ordinance (Cap 1), 'Government' means the Government of the Hong Kong Special Administrative Region whereas 'property' includes—

- (a) money, goods, choses in action and land; and
- (b) obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incident to property as defined in paragraph (a) of this definition.

#### [27.06] In his possession

'Possession' is physical detention coupled with the intention to hold the thing detained as one's own. 'Possession' can also be defined as the continuing exercise of a claim to exclusive use of a material object. 'Possession' has two elements: (1) the physical possession of the thing; (2) the *animus possidendi*, the intention to appropriate to oneself the exclusive use of the thing possessed. See *Osborn's Concise Law Dictionary* (9th Ed, Sweet & Maxwell, 2001, London) p 292.

**[27.07] Neglecting so to deliver up**

'Neglect' means to 'omit doing something'. See *The Oxford English Dictionary* (2nd Ed, Clarendon Press Oxford, 1989) Vol X, p 301. For the definition of 'deliver up', see [27.04].

**[27.08] Summary conviction**

Under s 3 of the Interpretation & General Clauses Ordinance (Cap 1), the term 'summary conviction' is defined as 'a summary conviction by a magistrate in accordance with the provisions of the Magistrates Ordinance (Cap 227)'.

**[27.09] Fine**

See [19.07].

**[27.10] Imprisonment**

There is no statutory definition of 'imprisonment'. It is a sentence of imprisonment imposed by a court in respect of an offence. Section 67A of the Criminal Procedure Ordinance (Cap 221), provides for the computation of sentences of imprisonment to take into account, for example, any period during which the prisoner was in custody by reason only of having been committed to custody by an order of a court made in connection with the proceedings relating to the sentence or the offence for which it was passed, or with any proceedings from which those proceedings arose. The Prisons Ordinance (Cap 234), provides for the appointment of a Commissioner of Correctional Services and other officers (s 3) and for the setting apart of places as prisons (s 4).

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**28. Desertion**

Any police officer who deserts shall be liable on summary conviction to imprisonment for 12 months and all arrears of pay due to him shall be forfeited.

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**[28.01] General note**

A police officer who deserts is liable on summary conviction to 12 months' imprisonment and all arrears of pay due to him will be forfeited. See *Halsbury's Laws of Hong Kong* (2nd Edn) Vol 42 on Police and Emergency Services [300.061].

For an example of desertion, see *R v Pun Ying Chau* [1977-1979] 1 HKC 545 where the appellant, being a detective station sergeant under investigation by ICAC, deserted his post and emigrated to Taiwan in 1975.

**[28.02] Police officer**

See [5.05].

**[28.03] Deserts**

'Desertion' means 'an offence against service law committed by a member of the armed force who leaves or fails to attend at his unit, ship, or place of duty. He must either intend at the time to remain permanently absent from duty without lawful authority or subsequently form that intention. One who absents himself without leave to avoid service overseas or service before the enemy is also guilty of desertion'. See *Oxford Dictionary of Law* (5th Ed, Oxford University Press, 2002) p 146.

**[28.04] Summary conviction**

See [27.08].

**[28.05] Imprisonment**

See [27.10].

**[28.06] Arrears of pay**

The word 'arrears' means 'debts not paid at the due date'. See *Osborn's Concise Law Dictionary* (9th Ed, Sweet & Maxwell, 2001, London) p 36.

**[28.07] Forfeited**

'Forfeit' means not only an actual taking away of property on breach of a condition, but also the doing or suffering a thing which creates a liability to such a deprivation (*Re Levy* 20 Ch D 119). In that case, Kay J said: 'The word "forfeit", the noun substantive, is defined in Dr Johnson's dictionary to be "something lost by the commission of a crime; something paid for the expiation of the crime; a fine; a mulct". By the same authority, the verb "to forfeit" is defined to mean, "to lose by some breach of condition; to lose by some offence". There, "forfeit" is contrasted with "lose". Then "forfeit", the participial adjective, is defined to be, "liable to penal seizure; alienated by a crime; lost either as to the right or possession, by breach of conditions". Now clearly the word "forfeit" does not merely mean that "which is actually taken from the man by reason of some breach of condition, but includes also that which becomes liable to be so taken". See *Stroud's Judicial Dictionary of Words & Phrases* (6th Ed, Sweet & Maxwell, 2000, London) Vol 1: A-F, pp 982 & 983.

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**29. Absence from duty**

Whenever it is alleged that any inspector, non-commissioned officer or constable has been absent from duty without leave for a period of

not less than 21 days, a gazetted police officer appointed by the Commissioner shall inquire into the fact and circumstances of such absence, and if he is satisfied that such person was absent from duty for a period of not less than 21 days without leave or other sufficient cause, he shall so declare, and such declaration shall for the purposes of section 37 be deemed to be a conviction under section 28.

(Added 13 of 1953 s 7; Amended 12 of 1982 s 6)

### [29.01] Enactment history

This section was added pursuant to s 7 of the Police Force (Amendment) Ordinance (13 of 1953), commencing 12 June 1953.

Pursuant to s 6 of the Police Force (Amendment) Ordinance (12 of 1982), commencing 12 March 1982, this section was amended—

- (a) by inserting 'inspector' after 'any';
- (b) by deleting 'board of 2 gazetted police officers to be' and substituting 'gazetted police officer';
- (c) by deleting 'the board' and substituting 'he';
- (d) by deleting 'it' where it appears for the second time and substituting 'he'; and
- (e) by deleting '35' and substituting '37'.

### [29.02] General note

If it is alleged that any inspector, non-commissioned officer or constable has been absent from duty without leave for a period of not less than 21 days, a gazetted police officer appointed by the Commissioner of Police must inquire into the fact and circumstances of such absence, and if he is satisfied that such person was absent from duty for a period of not less than 21 days without leave or other sufficient cause, he must declare this and the declaration will for the purposes of the provisions relating to conviction of police officers be deemed a conviction for desertion. See *Halsbury's Laws of Hong Kong* (2nd Edn) Vol 42 on Police and Emergency Services [300.061].

### [29.03] Inspector

See [11.05].

### [29.04] Non-commissioned officer

See [11.06].

### [29.05] Constable

See [11.07].

### [29.06] Absent from duty without leave

'Absent' does not connote that the person referred to was ever previously present; its ordinary sense is, to describe a person or persons as not being in a particular place at the time referred to (*Ashbury v Ellis* [1893] AC 339). To 'absent himself' from service within s 3 Masters and Servants Act 1823, (c 34) meant absent himself without lawful excuse (*Re Turner* 9 QB 80; *Re Geswood* 23 LJMC 35), and knowing he had no such excuse (*Rider v Wood* 29 LJMC 1). See also *Willett v Boote* 30 LJMC 6; *Ashmore v Horton* 29 LJMC 13.

Generally, a workman who refuses to avail himself of the convenient access to his work at the time and in the manner required by his employer, 'absents' himself from his work, and gives his employer a claim for damages for breach of contract (*Press v Bowes* 62 LJMC 145; affirmed sub nom. *Bowes v Press* [1894] 1 QB 202); see also *Tomlinson v Ashworth* 50 JP 165.

See *Stroud's Judicial Dictionary of Words & Phrases* (6th Ed, Sweet & Maxwell, 2000, London) Vol 1: A-F, 7 & 8.

### [29.07] Commissioner

See [4.03].

### [29.08] Deemed to be a conviction

'Conviction' means 'in criminal proceedings, a finding of guilty'. See *Oxford Dictionary of Law* (5th Ed, Oxford University Press, 2002) p 118.

For the definition of the word 'deemed', see [2.04].

## PART III

### DISCIPLINE AND DUTIES

#### 30. Police officers to obey lawful orders

Every police officer shall obey all lawful orders of his superior officers whether given verbally or in writing and shall obey and conform to police regulations and orders made under this Ordinance.

**[30.01] General note**

This section imposes on every police officer the statutory duty to obey all lawful orders of his superior officers. This duty is also expressly stated in the statutory oath or declaration of office (see s 26 Cap 232).

Indeed, every police officer is under a statutory duty to obey all lawful orders of his superiors and is liable to dismissal for failure to do so: *Yeung May-Wan & Ors* (2005) 8 HKCFAR 137 at p 170 para 91, [2005] HKCU 551. See also s 31 of the Police Force Ordinance.

The police force has the statutory duty of maintaining law and order. Its integrity and efficiency and public confidence in its integrity and efficiency are of fundamental importance if it is to discharge its duty effectively. Its integrity and efficiency can only be maintained if the force can ensure that its members are subjected to disciplinary authority. This could only be done effectively if every police officer has the statutory obligation to obey all lawful orders of his superiors. See *Fu Kin Chi v Secretary for Justice* [1998] 1 HKC 411, [1998] 1 HKLRD 271 at 280J–281B.

Given such duty set out in this section, the legislature must have intended by necessary implication to abrogate the privilege of a police officer against self-incrimination in a disciplinary investigation: *Fu Kin Chi v Secretary for Justice* (above), at 281F–J.

**[30.02] Police officer**

See [5.05].

**[30.03] Lawful orders**

See s 6 of this Ordinance.

**[30.04] Obey and conform**

In *R v Pannu (No 2)* (1996) 6 HKPLR 226 at 228I–229B, the second defendant, a serving police officer, was said to be obliged to answer the questions put to him by the officer of the Internal Investigations Department of the Royal Hong Kong Police Force under s 30 of the Police Force Ordinance (Cap 232). If he failed to obey that order, he would risk the inevitable consequence, in a disciplined service, of suffering disciplinary proceedings for such failure and certainly, potentially, suffering a penalty.

The Police Force is of course a disciplined force. Every police officer is required to obey all lawful orders of his superior officers and to obey and conform to police regulations and orders made under the Police Force Ordinance: *Lam Siu Po v Commissioner of Police* [2010] 2 HKC 149, (2009) 12 HKCFAR 237 para 42.

**[30.05] Police regulations and orders**

See [6.04] & [6.05].

**31. Summary dismissal\***

- (1) Notwithstanding any provision of this Ordinance and any other law, provision of Public Service (Administration) Order or the government regulations to the contrary, and without prejudice to section 38, the Commissioner may summarily dismiss any police officer whom he is satisfied is guilty of contravening police regulations, or any police orders whether given verbally or in writing.

(Amended 12 of 1982 s 7)

- (2) The Chief Executive may, if he thinks fit in any particular case, declare that—

(Amended 6 of 2009 s 6)

- (a) a police officer dismissed under subsection (1) is—
- (i) for the purposes only of the Pensions Ordinance (Cap 89), deemed to have retired from the public service in accordance with section 6(1)(d) of that Ordinance; or
  - (ii) for the purposes only of the Pension Benefits Ordinance (Cap 99), deemed to have retired from the public service in accordance with section 11(1)(g) of that Ordinance; or
- (b) the provident fund benefits of a police officer dismissed under subsection (1) are to be vested in that officer.

(Amended 36 of 1987 s 45; 6 of 2009 s 6)

(Added 63 of 1977 s 2; Amended 76 of 1999 s 3)

Editorial Note:

\* This section was amended by section 6 of the Disciplined Services Legislation (Miscellaneous Amendments) Ordinance 2009 (6 of 2009). For the relevant transitional provisions, please see section 30 of that Amendment Ordinance.

**[31.01] Enactment history**

This section was first added to the principal Ordinance under s 2 of the Police Force (Amendment) (No 2) Ordinance (63 of 1977), commencing 7 November 1977.

Pursuant to s 7 of the Police Force (Amendment) Ordinance (12 of 1982), commencing 12 March 1982, subsection (1) was amended by deleting 'disobedience of' and substituting 'contravening'.

Subsections (2)(a) and (2)(b) were subsequently added by virtue of s 45 of the Pension Benefits Ordinance (36 of 1987), commencing 1 July 1987.

Pursuant to Sch 3 to s 3 of the Adaptation of Laws (No 33) Ordinance (76 of 1999), commencing 1 July 1997, this section was amended - (a) in subsection (1), by repealing 'Colonial Regulations or the Regulations of the Government' and substituting 'Public Service (Administration) Order or government regulations'; (b) in subsection (2), by repealing 'Governor' and substituting 'Chief Executive'.

Pursuant to s 6 of the Disciplined Services Legislation (Miscellaneous Amendments) Ordinance (6 of 2009), commencing 31 March 2010, s 31(2) was amended by repealing everything after 'declare' and substituting the following—

- (a) a police officer dismissed under subsection (1) is—
  - (i) for the purposes only of the Pensions Ordinance (Cap 89), deemed to have retired from the public service in accordance with section 6(1)(d) of that Ordinance; or
  - (ii) for the purposes only of the Pension Benefits Ordinance (Cap 99), deemed to have retired from the public service in accordance with section 11(1)(g) of that Ordinance; or
- (b) the provident fund benefits of a police officer dismissed under subsection (1) are to be vested in that officer.

### [31.02] General note

This section confers on the Commissioner of Police the power of summary dismissal of any police officer whom he is satisfied is guilty of contravening police regulations or any police orders whether given verbally or in writing. See *Fu Kin Chi v Secretary for Justice* [1998] 1 HKC 411, [1998] 1 HKLRD 271 at 280E.

In *Cheung Hin Kwan v Commissioner of Police & Secretary for the Civil Service* [2006] 2 HKC 278, the applicant Cheung Hin Kwan, a sergeant in the Hong Kong Police Force, was observed by the Police to be having dinner with a senior office bearer of a triad society. The Commissioner of Police did consider the s 31 of Police Force Ordinance option against him – see pages 289-290 paras 44-50 of judgment.

The amendment made pursuant to the Disciplined Services Legislation (Miscellaneous Amendments) Ordinance commencing 31 March 2010 aims to introduce removal punishments which impinge on the provision of retirement benefits under the Civil Service Provident Fund Scheme.

### [31.03] Public Service (Administration) Order

See [13.04].

### [31.04] Government regulations

See [13.05].

### [31.05] Summarily dismiss

'Summarily' means 'by summary legal procedure'. See *The Oxford English Dictionary*, (2nd Ed, Clarendon Press Oxford, 1989) Vol XVII, p 170. For the definition of 'dismiss', see [15.04].

### [31.06] Police officer

See [5.05].

### [31.07] Police regulations

See [6.04].

### [31.08] Police orders

See [6.05].

### [31.09] Chief Executive

See [4.04].

### [31.10] Deemed to have retired

The word 'retire' means to withdraw from office or an official position. See *The Oxford English Dictionary* (2nd Ed, Clarendon Press Oxford, 1989), Vol XIII, p 782.

For the definition of the word 'deemed', see [2.04].

### [31.11] Public service

Under s 2 of the Pensions Ordinance (Cap 89), 'public service' means—

- (a) service in a civil capacity under the Government or any country or territory in the Commonwealth;
- (b) service under the East Africa High Commission, the East African Common Services Organization, the East African Posts and Telecommunications Administration, the East African Railways and Harbours Administration, the East African Community, the East African Harbours Corporation, the East African Posts and Telecommunications Corporation, the East African Railways Corporation or any of their successor authorities;
- (c) service which is pensionable—
  - (i) under the Oversea Superannuation Scheme;

[32.01]

- (ii) under any Acts relating to the superannuation of teachers in the United Kingdom;
- (iii) under a local authority in the United Kingdom; or (iv) under the National Health Service of the United Kingdom;
- (d) any other service that the Governor has determined to be public service for the purposes of this Ordinance;
- (e) except for the purposes of computation of a pension or gratuity and of section 9, service in respect of which a pension may be granted under the Governor's Pensions Act 1957 (1957 c 62 U.K.) or the Governors' Pension Scheme 1979 or any Act or Scheme amending or replacing that Act or Scheme;
- (f) service as the holder of the office of President, Vice-President, Justice of Appeal, Registrar, officer or servant of the Court of Appeal for Eastern Africa or the Court of Appeal for East Africa;
- (g) service in the service of the Interim Commission for the West Indies;
- (h) pensionable service with the British Telecommunication and the Post Office, United Kingdom of Great Britain and Northern Ireland.

Under s 2 of the Pension Benefits Ordinance (Cap 99), with respect to an officer appointed before 1 July 1997 - 'public service' and 'service' have been given the same meaning as that in s 2 of the Pensions Ordinance (Cap 89) whilst with respect to an officer appointed on or after 1 July 1997— 'public service' and 'service' mean (i) service in a civil capacity under the Government; (ii) any other service that the Chief Executive has determined to be public service for the purposes of Cap 99. See also [2.04].

### **32. Punishment of non-commissioned officers and constables**

Any non-commissioned officer or constable found guilty of an offence against discipline under regulations made under section 45 and required to resign or dismissed for failure to do so, shall not receive salary in lieu of notice.

*(Replaced 42 of 1977 s 8)*

#### **[32.01] Enactment history**

Pursuant to s 8 of the Police Force (Amendment) Ordinance (42 of 1977), commencing 1 September 1977, s 32 of the principal Ordinance was repealed and replaced by this section.

#### **[32.02] General note**

This section provides for the punishment of non-commissioned officers and constables who are found guilty of offences against discipline.

[34.03]

### **[32.03] Non-commissioned officer or constable**

See [11.06] & [11.07].

### **[32.04] An offence against discipline**

'An offence against discipline' in this context refers to an offence against discipline under regulations made under s 45 of this Ordinance.

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### **33. (Repealed 42 of 1977 s 9)**

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### **34. Threatening or insulting another officer of senior or equal rank**

Any police officer who threatens or insults another officer of senior or equal rank when such other officer is on duty or when such threat or insult relates to or is consequent on the discharge of duty by the officer so threatened or insulted, shall be liable on summary conviction to a fine of \$500 or to imprisonment for 1 year.

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#### **[34.01] General note**

A police officer who threatens or insults another officer of senior or equal rank when such other officer is on duty or when such threat or insult relates or is consequent on the discharge of duty by the officer so threatened or insulted, is liable on summary conviction to a fine of level 1 or to imprisonment for one year. See *Halsbury's Laws of Hong Kong* (2nd Edn) Vol 42 on Police and Emergency Services [300.062].

Pursuant to s 113C(2) of the Criminal Procedure Ordinance (Cap 221), a level 1 fine is defined as ranging from \$1-\$2000.

#### **[34.02] Police officer**

See [5.05].

#### **[34.03] Threat or insult**

'Threat' means 'the expression of an intention to harm someone with the object of forcing them to do something'. See *Oxford Dictionary of Law* (5th Ed, Oxford University Press, 2002) p 498.

'Insult' means 'an injuriously contemptuous speech or behaviour; a scornful utterance or action intended to wound self-respect; an affront, indignity, outrage'.

**[63.06] Police officer**

See [5.05].

**[63.07] In execution of his duty**

The duties of a police officer are set out in s 10 of this Ordinance.

In *HKSAR v Kwan Kin Sum* [2005] 3 HKLRD 830, the Appellant was convicted after trial of assaulting a police officer in the due execution of duty, contrary to s 36(b) of the Offences against the Person Ordinance (Cap 212). P1, a police constable stopped the appellant as he noticed he was walking fast in the street and suspected he might be possessing dangerous drugs. He attempted to search the appellant but was refused. P2, a police sergeant passed by and, after inquiring with P1, asked the appellant to co-operate. The appellant again refused and tried to walk away. P2 attempted to stop the appellant, who then made a slight push on P2's face with his hand.

On appeal, the Court held that as P1 failed to point out how the appellant appeared suspicious or explain why he suspected the appellant might possess dangerous drugs and thus failed to comply with the requirements laid down in s 54(2) of this Ordinance and/or s 52(1)(f)(i) of the Dangerous Drugs Ordinance (Cap 134), it followed that P1 was not acting in the due execution of duty at the material time. P2, on the other hand, had not given any reason for suspecting that the appellant possessed dangerous drugs. He was merely acting upon P1's report. He was also not acting in the due execution of duty.

The Court further held that given P2's lack of power to stop and search the appellant, the appellant's act was a reasonable reaction to what P2 did and could not amount to an 'assault'.

In *HKSAR v Wong Hark Keung* Unreported, HCMA 588/2010, the Court pointed out a line of authority in England which suggested that where a police officer physically restrains a person, but does not at that time intend or purport to arrest him, then the officer commits an assault, even if an arrest would have been justified. Accordingly, an assault by a defendant in such circumstances is not an assault committed on a police officer acting in the due exercise of his duty. However, the Court expressed the view that in that case, it was not necessary to engage the law on such topic.

As to 'Assault', see [63.03].

**[63.08] Giving of false information with intent to defeat or delay the ends of justice**

Facts supporting this offence may also be sufficient to support the common law offence of doing an act tending to pervert the course of justice. See [63.02].

**[63.09] Wilfully**

A person wilfully does something if either he (i) deliberately does an act, knowing that there is some consequences; or (ii) does it because he does not care about the whether there will be such a consequence (See *R v Sheppard* [1981] AC 394).

**64. Offence of making false report of commission of offence, etc**

Any person who knowingly—

- (a) makes or causes to be made to any police officer a false report of the commission of any offence; or
- (b) misleads any police officer by giving false information or by making false statements or accusations,

shall be guilty of an offence and shall be liable on summary conviction to a fine of \$1000 and to imprisonment for 6 months.

(Added 16 of 1959 s 2)

**[64.01] Enactment history**

This section was added pursuant to s 2 of the Police Force (Amendment) Ordinance (16 of 1959), commencing 5 June 1959.

**[64.02] Knowingly**

See [61.03].

**[64.03] Causes to be made**

See [62.03].

**65. Penalty on unauthorized use of police uniform**

If any person, not being a member of the police force, wears without the permission of the Commissioner the uniform of the police force, or any dress having the appearance or bearing any of the distinctive marks of that uniform, he shall be guilty of an offence and shall be liable on summary conviction to a fine of \$250.

(Added 29 of 1950 s 17)



**[65.01] Enactment history**

This section was added pursuant to s 17 of the Police Force (Amendment) Ordinance (29 of 1950), commencing 1 September 1950.

**[65.02] General note**

This section creates a summary offence for a person to impersonate a police officer by wearing apparel with distinctive features of the police uniform.

**[65.03] Police force**

See [2.03].

**[65.04] Commissioner**

See [4.03].

**66. Special services and fees**

- (1) On the application of any person the Commissioner may, if he thinks fit, detail any police officer or police officers to perform special services in upon or about any premises or business or vessel specified by the applicant.

*(Amended 58 of 1999 s 3)*

- (2) The applicant shall pay to the Commissioner for the services of any such officer or officers so detailed such fees as the Commissioner may think fit.
- (3) As soon as practicable after receiving fees payable under subsection (2), the Commissioner must pay the fees into the Police Welfare Fund and must arrange for them to be accounted for monthly.

*(Replaced 58 of 1999 s 3)*

- (4) Fees payable under subsection (2) are recoverable by proceedings brought in a court of competent jurisdiction as a debt due to the Commissioner of Police Incorporated.

*(Added 58 of 1999 s 3)*

**[66.01] Enactment history**

Under Sch 2 to s 3 of the Disciplined Services Welfare Funds Legislation (Amendment) Ordinance (58 of 1999), commencing 19 November 1999,

subsection (1) was amended by repealing 'do special police duty' and substituting 'perform special services'.

Also under Sch 2 to s 3 of the Disciplined Services Welfare Funds Legislation (Amendment) Ordinance (58 of 1999), commencing 19 November 1999, the original subsection (3) was replaced by the current one and subsection (4) was added.

**[66.02] Commissioner**

See [4.03].

**[66.03] Police officer**

See [5.05].

**[66.04] Police Welfare Fund**

See [39A.07].

**[66.05] Commissioner of Police Incorporated**

See s 39A of this Ordinance.

**67. Power of Commissioner to require information from banks and deposit-taking companies**

- (1) Where it appears to the Commissioner—
- (a) that there is reasonable cause to suspect that an indictable offence has been committed; and
  - (b) that it is expedient for the purpose of investigating such offence or apprehending the offender to exercise the power conferred by this subsection,

the Commissioner may, by notice in writing, require any bank or deposit-taking company specified in the notice to notify him in such manner and within such reasonable period as may be so specified whether—

- (i) any person specified in the notice has or, so far as the bank's or company's records disclose, has had an account in Hong Kong with such bank or deposit-taking company; or
- (ii) in the case of a bank, such bank—
  - (A) provides or, so far as the bank's records disclose, did provide a safety deposit box in

- Hong Kong for such person or to which such person is, according to the bank's records, permitted to have access; or
- (B) holds or, so far as the bank's records disclose, has held in its custody in Hong Kong any property for such person or to which such person is, according to the bank's records, permitted to have access.
- (2) Before the period specified in a notice under subsection (1) expires, the Commissioner may by notice in writing extend such period by substituting therefor such longer period as he may deem appropriate; and a reference in subsection (4) to the requirements of a notice shall, in respect of a requirement relating to such period, be construed as a reference to a requirement relating to such period as so extended.
- (3) A notice under this section may be served by registered post, and any such notice shall be deemed to have been properly served on any bank or deposit-taking company if a letter containing the notice is sent by registered post addressed—
- (a) in the case of a bank or deposit-taking company incorporated in Hong Kong, to its registered office in Hong Kong;
- (b) in any other case, to any person resident in Hong Kong who is authorized to accept service of process in Hong Kong on behalf of the bank or deposit-taking company, at the address required to be delivered to the Registrar of Companies under Part 16 of the Companies Ordinance (Cap 622):

*(Amended 28 of 2012 ss 912 & 920)*

Provided that where it is not practicable to serve, in the manner provided in paragraph (b), a bank or deposit-taking company which is not incorporated in Hong Kong, the notice may be served on the manager or other person in charge of any place of business established in Hong Kong by the bank or deposit-taking company.

- (4) If any bank or deposit-taking company on which a notice under this section is served, without reasonable excuse—
- (a) fails to comply with any of the requirements of such notice; or
- (b) in purported compliance with any such requirement, furnishes any information which is false in a material particular,

such bank or deposit-taking company shall be guilty of an offence and shall be liable—

- (i) on conviction upon indictment, to a fine at level 6;
- (ii) on summary conviction, to a fine at level 5.
- (5) Where a bank or deposit-taking company on which a notice under this section is served, at any time—
- (a) fails to comply with any of the requirements of such notice; or
- (b) in purported compliance with any such requirement, furnishes any information which is false in a material particular,

with the consent or connivance of any individual, the individual shall, whether or not an offence under subsection (4) is committed, be guilty of an offence under this subsection if at that time—

- (A) he is a director, manager, secretary or similar officer of the bank or deposit-taking company; or
- (B) he is purporting to act as such officer or as agent of the bank or deposit-taking company; or
- (C) the bank or deposit-taking company is managed by its members, of whom he is one,

and shall be liable—

- (i) on conviction upon indictment, to a fine at level 5 and to imprisonment for 1 year;
- (ii) on summary conviction, to a fine at level 3 and to imprisonment for 6 months.

- (6) Where a notice under this section is served on a bank or deposit-taking company, any individual who wilfully causes or procures the bank or deposit-taking company—

- (a) to fail to comply with any of the requirements of such notice; or
- (b) in purported compliance with any such requirement, to furnish any information which is false in a material particular,

shall, whether or not an offence under subsection (4) is committed, be guilty of an offence under this and shall be liable—

- (i) on conviction upon indictment to a fine at level 5 and to imprisonment for 1 year;
- (ii) on summary conviction to a fine at level 3 and to imprisonment for 6 months.

(7) Section 7 shall not apply in relation to the power conferred by subsection (1) or (2), but such power may be exercised by any police officer not below the rank of assistant commissioner or any member of the Customs and Excise Service not below the rank of assistant commissioner authorized in writing by the Commissioner in that behalf; and, for the purposes of this section, where such power is exercised by any such police officer or member of the Customs and Excise Service it shall be presumed unless the contrary is proved that such police officer or member is so authorized to exercise such power.

(8) In this section—

*bank* (銀行) means a bank within the meaning of section 2 of the Banking Ordinance (Cap 155);

*deposit-taking company* (接受存款公司) means a deposit-taking company or restricted licence bank within the meaning of section 2 of the Banking Ordinance (Cap 155).

(Replaced 49 of 1995 s 53)

(Added 54 of 1983 s 2; Amended ER 2 of 2014)

#### [67.01] Enactment history

This section was added pursuant to s 2 of the Police Force (Amendment) Ordinance (54 of 1983), commencing 12 August 1983.

Pursuant to s 25 of the Banking (Amendment) Ordinance (49 of 1995), commencing 15 November 1995, the original subsection (8) was repealed and replaced by the current one.

Pursuant to Editorial Record 2 of 2014, effective on 10 April 2014, 'of \$100,000' was repealed and substituted with 'at level 6' in s 67(4)(i); 'of \$50,000' was repealed and substituted with 'at level 5' in s 67(4)(ii) and (5)(i); 'of \$10,000' was repealed and substituted with 'at level 3' in s 67(5)(ii); 'of \$50,000' was repealed and substituted with 'at level 5' in s 67(6)(i); and 'of \$10,000' was repealed and substituted with 'at level 3' in s 67(6)(ii).

#### [67.02] Commissioner

See [4.03].

#### [67.03] Bank and deposit-taking companies

Under s 2 of the Banking Ordinance (Cap 155), a 'bank' means a company holding a valid banking licence and a 'deposit taking company' is a company with a valid restricted banking licence.

#### [67.04] Served by registered post...deemed to have been properly served

See provision in s 8 of the Interpretation & General Clauses Ordinance (Cap 1).

#### [67.05] Wilfully causes

See [62.03] and [63.09].

#### [67.06] Procures

It was said in *AG's Reference (No 1 of 1975)* [1975] QB 773: 'To procure means to produce by endeavour. You procure a thing by setting out to see that it happens and taking the appropriate steps to produce that happening.'

reprimand or caution) shall be suspended pending the determination of the appeal.

(LN 305 of 1982)

**27. Commissioner may report to Chief Executive**

- (1) Where any inspector is found guilty of any of the offences against discipline specified in regulation 3(2) 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 shall forward to the Chief Executive a report containing—

(LN 305 of 1982 of 2009 s 9)

- (a) the record of the proceedings;
  - (b) the record of the inspector's service;
  - (c) the Commissioner's recommendation; and
  - (d) his reasons for not making an award under regulation 25(1) or (2).
- (2) The Commissioner shall at the same time as he forwards a report under paragraph (1) inform the inspector that his case will be considered by the Chief Executive, and the inspector may within 14 days of the receipt of such information, or within such extended time as the Chief Executive may allow, forward to the Chief Executive a written petition containing such representations as may be relevant to enable the Chief Executive to exercise his discretion under paragraph (3).
- (3) Where any report is forwarded to the Chief Executive under this regulation, the Chief Executive may—
- (a) order that the inspector be dismissed without retirement benefits; or
  - (b) if in all the circumstances of the case he considers justice so requires, set aside any finding of an appropriate tribunal and order that the inspector be dismissed without retirement benefits if in his opinion such punishment is warranted by any finding which has not been set aside; or
  - (ba) if in all the circumstances of the case, he is of the opinion that the misconduct of the inspector is serious enough to warrant the compulsory retirement of the inspector, order that the inspector be

compulsorily retired with full retirement benefits or reduced retirement benefits or without retirement benefits; or

(LN 305 of 1982)

- (c) remit the case to the Commissioner and the Commissioner may then award any punishment which he has power to award under regulation 25, but where the Commissioner awards any punishment under this paragraph, regulation 26(2) shall apply as if such punishment had been awarded under regulation 25; or
- (d) if he is of the opinion that the inspector does not deserve to be punished but that the proceedings disclose grounds for requiring the inspector to retire in the public interest, without further proceedings require him to retire in the public interest.

(LN 23 of 19786 of 2009 s 9)

Note: This section was amended by section 6 of the Disciplined Services Legislation (Miscellaneous Amendments) Ordinance 2009 (6 of 2009). The transitional provisions contained in section 30 of that Amendment Ordinance read as follows—

**30. Transitional provisions**

- (1) If, after the commencement\* of Parts 2 and 4, any public officer who is found guilty of or pleads guilty to any misconduct or offence for which that officer is punishable under any enactment amended by this Ordinance, that officer is to be punished in accordance with that enactment as amended by this Ordinance even though the misconduct or offence was committed before the commencement.
- (2) If, after the commencement of Part 5, a court in criminal proceedings finds that a charge against any police officer in respect of a criminal offence has been proved, pay and allowance may cease to be payable to that officer in accordance with section 37(4) of the Police Force Ordinance (Cap 232) as amended by this Ordinance even though the criminal offence was committed before the commencement.

\* Commencement date: 31 March 2010.

**27A. Joint proceedings against inspectors and junior police officers**

- (1) Where one or more inspectors and one or more junior police officers are charged with a disciplinary offence or offences arising out of the same facts, the Commissioner or a senior police officer may direct that the defaulters be charged and proceeded against jointly at the same proceedings unless—
- (a) one of the defaulters objects to the appropriate tribunal on the grounds of partiality or bias; or
  - (b) one of the defaulters objects to joint proceedings on the grounds of disparity of rank.

- (2) Joint proceedings under this regulation shall be dealt with as if they were proceedings against an inspector under Part III.

(LN 305 of 1982)

#### PART IV

#### MISCELLANEOUS PROVISIONS

##### 28. Power to suspend punishment

- (1) Subject to this regulation, any punishment awarded by an appropriate tribunal may be suspended by that tribunal or by any police officer of higher rank than the officer or officers constituting the tribunal for a period of not less than 6 months nor more than 1 year.
- (2) Subject to paragraph (3), where any punishment has been suspended under this regulation the appropriate tribunal or any police officer of higher rank shall at the expiration of the period of suspension review the case or may, at any time during the period of suspension, review the case, taking into consideration such reports on the conduct of the defaulter during the period of suspension as may be available.
- (3) The appropriate tribunal or officer of higher rank may remit or reduce the punishment and in such an event shall cause any entry relating to the offence which has been made in the records of the defaulter to be expunged or altered, as the case may be, or order the punishment to be executed forthwith, except that if, during the period of suspension, the defaulter is convicted of a further offence against discipline, being an offence committed after the offence for which the suspended punishment was awarded, the suspended punishment shall be executed forthwith and any punishment on such further offence shall not be suspended.

(LN 305 of 1982)

- (4) This regulation shall not affect the lodging and hearing of an appeal.

##### 29. Payment for loss or damage to property

- (1) Where an appropriate tribunal has found an inspector or junior police officer guilty of an offence under regulation 3(2), the tribunal may, in addition to or in lieu of any punishment he 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 whatsoever

- entrusted or supplied to the defaulter in his 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 him; 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, in each case 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 salary for one month.

- (2) A gazetted officer may require an inspector or junior police officer to pay to the Government in full or in part—

- (a) the cost of repairing or replacing any article of clothing, equipment or property whatsoever entrusted to the inspector or junior police officer in his capacity as police officer and lost or damaged by him;
- (b) the cost of repairing or replacing any Government property lost or damaged by him; 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 inspector or junior police officer,

in each case only if the loss or damage has resulted from the junior police officer's or inspector's neglect or fault and the amount ordered to be paid does not exceed his salary for one month.

- (3) For the purpose of enabling due inquiry to be made as to whether any police officer should be required to pay any amount under paragraph (2), affording him due opportunity to make representations and enabling any requirement under that paragraph to be appealed against and reviewed, Parts II and III shall apply *mutatis mutandis* to and in respect of such a requirement as they apply to and in respect of a finding of guilty of an offence under regulation 3(2) and an award of punishment.

##### 29A. Seizure and detention of property required as exhibit

- (1) A police officer of the rank of sergeant or above may seize and detain any property which he reasonably suspects to be the property of a police officer that may be required for the purpose of proving a disciplinary offence.
- (2) Any property seized and detained under paragraph (1) and

which is not admitted in evidence as an exhibit in disciplinary proceedings shall—

- (a) if the owner thereof is not known, be forfeited and disposed of in accordance with paragraph (3) or (4) as the case may be; and
  - (b) if the owner thereof is known, be returned to the owner.
- (3) Any property seized and detained under this regulation the ownership of which is not known shall be disposed of in such manner as the Commissioner may determine and, if sold, after the deduction of expenses necessarily incurred in the sale, the proceeds of sale (if any) shall be paid into the general revenue.
  - (4) Any money seized and detained under this regulation the owner of which is not known shall be paid into the general revenue.

(LN 305 of 1982)

#### 29B. Disposal of exhibits

- (1) An appropriate tribunal may, in addition to any award made in any proceedings, order the forfeiture of any property admitted in evidence as an exhibit.
- (2) Property ordered to be forfeited under paragraph (1) shall, after the award has been confirmed and any appeal determined, be disposed of in such manner as the Commissioner shall determine and, if sold, after the deduction of expenses necessarily incurred in the sale, the proceeds of sale (if any) shall be paid into the general revenue.
- (3) Money ordered to be forfeited under paragraph (1) shall, after the award has been confirmed and any appeal determined, be paid into the general revenue.

(LN 305 of 1982)

#### 30. Awards

The punishment that may be awarded by an inspector, a superintendent, a senior police officer, the Force Discipline Officer, the Commissioner and the Governor respectively shall be those set out in the Schedule.

(LN 305 of 1982)

#### 31. Effect of award

Subject to regulation 28, an award of punishment made under these regulations shall take effect from the date of

announcement or communication to the defaulter of the award.

#### 32. (Omitted as spent)

- (b) for that purpose, request the Director to pay the surplus money to the corporation.
- (3) The corporation must—
  - (a) comply with any direction that the Financial Secretary may give in relation to the investments or deposits made under subsection (2); and
  - (b) ensure that all dividends and interest accruing from the investments and deposits made under this Regulation are credited to the Fund.

#### 5. Circumstances in which investments are to be disposed of

- (1) If at any time the uninvested portion of the Fund falls below the amount necessary for the current requirement of the Fund, the corporation must dispose of such part of the investments of the Fund as will enable the Fund to meet that requirement.
- (2) In this section, *the uninvested portion of the Fund* (基金的未投資部分) means the part of the Fund that is neither invested in securities nor placed on deposits under section 4.

#### 6. Temporary loans to the Fund

- (1) Pending the disposal of the investments of the Fund under section 5, the corporation may, with the approval of the Financial Secretary, request the Director to make a loan to the Fund of an amount necessary for meeting the current requirement of the Fund.
- (2) If the Director has made a loan to the Fund under subsection (1), the corporation must, as soon as practicable after disposing of the relevant investments, repay to the Director the loan together with interest at such rate as the Financial Secretary may determine.

#### 7. Certification of vouchers

- (1) A person who requests the Director to make a reimbursement or payment from the Fund, must, at the time of the request, give the Director a voucher certified by the corporation or its delegate in relation to the request.
- (2) The Director must not make payment from the Fund on the authority of a voucher unless the voucher has been certified by the corporation or its delegate.

#### 8. Loans by the Fund

- (1) A loan made from the Fund in accordance with section 39E(1) of the Ordinance is subject to the following conditions—
  - (a) repayment by a number of monthly instalments specified by the corporation, not exceeding 48;

- (b) repayment in full (with any interest due) if any monthly instalment is not paid on time;
- (c) at the discretion of the corporation, the payment of interest at a rate that complies with subsection (2), with that interest being calculated monthly on the balance outstanding at the end of each month until the loan is repaid in full, and payable within 1 month after the date on which the previous instalment became payable.
- (2) The rate mentioned in subsection (1)(c) must not exceed—
  - (a) 5 per cent per year; or
  - (b) such higher percentage as the corporation may determine with the approval of the Financial Secretary.
- (3) The corporation may, by proceedings brought in a court of competent jurisdiction, recover as a debt any part of such a loan that is not repaid, or any interest on such a loan that is not paid, when it is due.

#### 9. Irrecoverable assets and debts to be written off

- (1) The Financial Secretary, or a public officer authorized by the Financial Secretary, may authorize the corporation to write off an asset or a debt due to the Fund that the corporation considers irrecoverable.
- (2) The writing-off of an asset or debt under subsection (1)—
  - (a) is subject to any guideline or direction that the Financial Secretary may specify or give; and
  - (b) takes effect only for the purpose of the accounting records of the Fund; and
  - (c) does not extinguish any right of the corporation to recover the asset or debt being written off.

#### 10. Accounting records and annual statement of accounts

- (1) The corporation must ensure that—
  - (a) proper accounting records of all transactions, including investments, relating to the Fund are kept; and
  - (b) an annual statement of accounts of the Fund is prepared for every period of 12 months ending on 31 March in each year.
- (2) The corporation must ensure that the accounting records and annual statement of accounts are kept and prepared in such manner as the Director may require.

**11. Audit of annual statement of accounts**

- (1) The corporation must, within the period specified in subsection (2), submit an annual statement of accounts of the Fund to the Director of Audit for the purpose of auditing.
- (2) For the purposes of subsection (1), the specified period is 6 months after the end of the period to which the statement relates, or such shorter period as is agreed between the corporation and the Director of Audit.
- (3) The Director of Audit must, within 3 months after receiving the annual statement of accounts from the corporation—
  - (a) audit the statement; and
  - (b) certify the statement subject to such report (if any) as the Director of Audit thinks appropriate.

**12. Audited statement of accounts to be laid on table of Legislative Council**

The corporation must ensure that—

- (a) a copy of the audited statement of accounts of the Fund together with the report (if any) of the Director of Audit; and
- (b) a report by the corporation on the administration of the Fund during the period to which the statement relates,

are laid on the table of the Legislative Council within 3 months after the date on which the corporation has received the audited statement from the Director of Audit, or within such further period as the Chief Executive may allow in a particular case.

**13. (Omitted as spent)**

**14. Savings**

- (1) Without limiting section 23 of the Interpretation and General Clauses Ordinance (Cap 1)—
  - (a) all investments and deposits made under the repealed Regulations at the commencement of this Regulation are taken as having been made under this Regulation; and
  - (b) all loans granted subject to the conditions provided in the repealed Regulations, if outstanding at the commencement of this Regulation, continue to be subject to those conditions, and are as valid and enforceable as if they were granted under this Regulation; and

- (c) any act begun under the repealed Regulations but not completed before the commencement of this Regulation may, if authorized or required by this Regulation, be completed in accordance with this Regulation.
- (2) In this section, *the repealed Regulations* (已廢除規例) means the Police (Welfare Fund) Regulations (Cap 232 Sub Leg B) repealed by this Regulation.

**15. (Omitted as spent)**