

BERMUDA STATUTORY INSTRUMENT

SR&O 38/1975

POLICE (DISCIPLINE) ORDERS 1975

[made under section 32 of the Police Act 1974 [title 10 item 21] and brought into operation on 5 April 1975]

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FIRST SCHEDULE

Discipline Code

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Interpretation

- 1 In these Orders, unless the context otherwise requires —
- "the Commissioner" means the Commissioner of Police;
 - "Divisional Officer" means the police officer in charge of a Division or a Department of the Police; and
 - "Division" shall be construed accordingly;
 - "Investigating Officer" means a police officer appointed as such under paragraph 3;
 - "Police" means the Bermuda Police Service;
 - "police officer" means any member of the Police of the rank of Chief Inspector or below and includes cadets;
 - "Presiding Officer" means an officer appointed to hear a charge under paragraph 7.

[paragraph 1 amended by 1997 : 37 effective by notice in Official Gazette]

Offences against discipline

- 2 A police officer shall be guilty of an offence against discipline if he commits any of the acts set out in the Discipline Code in the First Schedule.

Investigation of charges

- 3 (1) Whenever a Divisional Officer receives a report, complaint or allegation as to the conduct of a police officer in his Division which tends to disclose the commission of an offence against discipline, he shall appoint an Investigating Officer of the rank of Sergeant or above to investigate and report to him upon the facts.
- (2) The Investigating Officer appointed in any particular case shall not be of lesser rank or seniority than the police officer in respect of whom the report, complaint or allegation has been made.
- (3) The Investigating Officer shall, as soon as practicable, inform the police officer concerned of the nature of the allegation under investigation by written notice in a form approved for use by the Commissioner.
- (4) The police officer concerned shall within 24 hours inform the Investigating Officer in writing whether he admits or denies the allegation and may make a statement in writing in reply to it and may state the names and addresses of any witnesses to relevant facts whose presence he wishes secured at any subsequent hearing.

Action by Divisional Officer and Deputy Commissioner

4 (1) The Divisional Officer shall consider the report of the Investigating Officer and shall recommend whether or not the police officer concerned should be charged with an offence against the discipline.

(2) The Divisional Officer shall forward his recommendation together with the report of the Investigating Officer, without delay to the Deputy Commissioner of Police.

(3) On receipt of the recommendation the Deputy Commissioner of Police shall review the recommendation and —

- (a) if he decides that no further action is to be taken, the police officer concerned shall be promptly notified in writing to that effect; but
- (b) if he decides that the officer concerned (hereinafter called "the accused") is to be charged, the charge shall be entered on a discipline form approved for use by the Commissioner, together with sufficient particulars for the accused to know the precise nature of the offence charged and of the allegations of fact made against him.

Documents to be supplied to the accused

5 The accused shall as soon as possible be supplied with —

- (a) a copy of any written statement he may have made under paragraph 3;
- (b) a copy of the discipline form;
- (c) a copy of the report, complaint or allegation on which the charge is founded and any reports thereon notwithstanding that they may be confidential;
- (d) a copy of any statement relating to the charge made by any witness to be called in support of the charge together with the witness' name and address;
- (e) a copy of any statement relating to the charge made by any person, other than a witness to be called in support of the charge, to the Divisional Officer or to the Investigating Officer or anybody on his behalf, together with that person's name and address.

Witnesses for the defence

6 Any witnesses whom the accused desires to call at the hearing of the charge shall be notified that their attendance is requested at the relevant time and place, and any such witnesses who are members of the Police shall be ordered to attend the hearing.

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Procedure at hearing

7 (1) An officer of the rank of Superintendent or above (hereinafter called "the Presiding Officer") shall be appointed by the Commissioner to hear the case.

(2) The accused shall be ordered to attend the hearing and may conduct his defence in person or by any police officer he selects.

(3) The case in support of the charge shall be prosecuted by the Divisional Officer who ordered the investigation unless the Commissioner in special circumstances otherwise directs.

(4) The Presiding Officer shall explain the charge to the accused and ask him whether he admits or denies the charge. Unless the accused distinctly admits the charge, the hearing shall proceed as if he had denied it but if he admits the charge the Presiding Officer shall proceed under paragraph 10(1).

(5) Before the case in support of the charge is presented, the accused may submit that the facts alleged in that charge are not such as to constitute the offence with which he is charged, and, if the Presiding Officer upholds the submission, he shall dismiss any such charge.

(6) When the witnesses in support of the charge have been heard, the Presiding Officer shall inform the accused —

- (a) that he may give evidence, in which case he would render himself liable to cross-examination; or
- (b) that he may make a statement, in which case he could only be questioned for the purpose of clearing up an ambiguity; or
- (c) that he need say nothing; and (in any case)
- (d) that he may call witnesses in his defence

and on the conclusion of the case for the defence, the Presiding Officer shall inform the accused that he or his representative may make a concluding statement, summarising the facts and arguments for the defence.

(7) No witness called to give evidence at the hearing of a charge shall be obliged to answer any question the answer to which may tend to incriminate him or render him liable to any forfeiture or penalty.

(8) The Presiding officer shall cause to be maintained a record of the proceedings including —

- (a) a record in narrative form of any evidence given or any statement made as to facts; and
- (b) a note of any argument submitted during the hearing.

(9) Evidence given at the hearing of a charge shall be on oath at the request of the accused or by direction of the Presiding Officer.

Powers of Presiding Officer

8 The Presiding Officer shall have the following powers —

- (a) to call witnesses;
- (b) to require the production of all documents relevant to the charge;
- (c) to adjourn the hearing from time to time;
- (d) to award to any person, who is not a police officer and who has attended as a witness at such hearing, such sum of money as in the opinion of the Presiding Officer has been reasonably incurred by such person as expenses by reason of his attendance and such sum shall be paid out of the Consolidated Fund.

Presence of accused at hearing

9 (1) The accused shall have the right to be present during the whole of the hearing so long as he conducts himself properly.

(2) If the accused conducts himself improperly, the Presiding Officer may direct him to be removed and proceed with the hearing in his absence, making such provision as it may appear sufficient for his being informed of what passes at the hearing and for making his defence.

(3) If the accused is absent from the hearing but good reason is shown to the Presiding Officer to account for his absence, the hearing shall be postponed or adjourned to enable him to be present.

Finding and recommendation

10 (1) If the accused has admitted the charge the Presiding Officer shall record a finding that the charge is proved.

(2) If the accused has denied the charge, then after hearing all the evidence and any statement which may be made by or on behalf of the accused, the Presiding Officer shall either dismiss the charge or record a finding that the charge is proved and in either case he shall make a written note of his reasons for so finding.

(3) The Presiding Officer shall record on the discipline form his findings in respect of each charge with which the accused stands charged, and he shall recommend in respect of each charge which he has found proved an appropriate punishment in accordance with paragraph 11.

Punishments

11 (1) The Presiding Officer shall have power to recommend to the Commissioner the imposition of any one of the following punishments on

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any police officer against whom he has found proved an offence against discipline in accordance with these Orders —

- (a) dismissal;
- (b) requirement to resign as an alternative to dismissal;
- (c) reduction in rank or grade;
- (d) withholding, stoppage, deferment or reduction of increments;
- (e) a fine not exceeding 28 days' pay;
- (f) severe reprimand;
- (g) reprimand;
- (h) admonition.

(2) An accused who has been found guilty of an offence under paragraph 11 of the Discipline Code may, in addition to any other punishment which may be imposed, be recommended to forfeit all right to pay and allowances in respect of the period of absence.

(3) Where an accused has been found guilty of any offence which has resulted in injury to the person or damage to the property of the complainant, the Presiding Officer may, in addition to any other punishment he may have recommended, that the accused pay to the complainant such sum not exceeding two hundred and forty dollars as the Presiding Officer may consider reasonable to compensate the complainant for the injury or damage he has suffered.

(4) If any police officer loses by neglect or wilfully disposes of, or wilfully or negligently damages any arms, ammunition, accoutrements, uniform or other article supplied to him or any property committed to his charge, he may, in addition to or in lieu of any other punishment be subjected to a recommendation to reimburse the amount of such loss or damage in a sum not exceeding 28 days pay.

(5) The Presiding Officer shall record on the discipline from his recommendations as to punishment which he shall forthwith notify to the accused and he shall forward the recommendation together with the record of the hearing to the Commissioner without delay.

Review of recommendation and order

12 (1) On receipt of a recommendation under paragraph 11 the Commissioner shall review the proceedings and, except where the accused is a Chief Inspector or Inspector and the recommendation is made under sub-paragraph (1) (a), (b) or (c) of that paragraph, he may either —

- (a) accept the recommendation and impose the recommended punishment; or

- (b) remit the recommended punishment or mitigate, alter or increase the recommended punishment to any other punishment which might have been recommended and impose it accordingly; or
- (c) set aside both the finding and the recommendation; or
- (d) order a rehearing of the charge before himself or some other presiding officer or direct the taking of further evidence by the Presiding Officer.

(2) The decision of the Commissioner under sub-paragraph (1) shall be notified forthwith to the accused.

(3) On receipt of a recommendation under paragraph 11(1)(a), (b) or (c) in respect of a Chief Inspector or Inspector the Commissioner shall consider the proceedings and shall forward the record without delay to the Public Service Commission together with any observations in writing which he may think fit to make thereon.

(4) The Public Service Commission shall consider any proceedings forwarded under sub-paragraph (3) and shall recommend to the Governor in accordance with section 82 of the Constitution [*title 2 item 1*] what punishment if any should be imposed for the offence or what other order should be made. The decision of the Governor shall be communicated to the Commissioner who shall notify the accused within 3 days.

Dismissal for criminal conviction

13 In any case where a police officer has been convicted by the civil courts of any offence involving dishonesty or moral turpitude, or has been sentenced to a term of imprisonment, the Commissioner may recommend to the Public Service Commission and the Public Service Commission may thereupon recommend to the Governor that such police officer be dismissed. The Commissioner shall cause the police officer concerned to be notified within 3 days of any recommendation made by him under this paragraph.

Appeals

- 14 (1) Any accused police officer who is aggrieved —
- (a) by a finding that a charge of an offence against discipline has been proved against him;
 - (b) by the nature or extent of the punishment imposed upon him by the Commissioner for such an offence; or
 - (c) by a recommendation for his dismissal made by the Commissioner under paragraph 13,

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may, within a period of seven days from the date when the Commissioner's decision or recommendation was notified to him, appeal in accordance with this paragraph.

(2) Every appeal shall be addressed in writing to the Commissioner for onward transmission to the Public Service Commission and shall contain the grounds of appeal in concise form; and on any such appeal the appellant may be represented by a barrister and attorney.

(3) The Public Service Commission shall consider the proceedings subject to such procedure as it considers just and equitable in the circumstances and shall recommend to the Governor in accordance with section 82 of the Constitution [*title 2 item 1*] whether he should —

- (a) confirm the finding and punishment; or
- (b) set aside the finding and punishment; or
- (c) confirm or vary the finding and substitute for the punishment such other punishment as could have been recommended under paragraph 11; or
- (d) in the case of a recommendation that a police officer be dismissed under paragraph 13, confirm or withhold confirmation of the dismissal.

(4) The decision of the Governor shall be communicated to the Commissioner and the Commissioner shall govern himself accordingly, shall cause the appropriate entry, if any, to be made in the accused's record of service, and shall notify the accused in writing within 3 days.

Suspension

15 (1) Where the Commissioner has reason to believe that a police officer has committed an offence against the Discipline Code, he may suspend such police officer from duty if, in his opinion, the offence is such that the police officer should not continue on duty:

Provided that where the police officer is of or above the rank of Inspector, the Commissioner shall immediately report any such suspension to the Governor, who may either confirm or rescind the order of suspension.

(2) The powers, privileges and benefits vested in a police officer shall be in abeyance during his suspension, but he shall continue to be subject to the same responsibilities, discipline and penalties and to the same authority as if he had not been suspended.

(3) Any police officer suspended from duty shall not, in respect of the period of suspension from duty, be entitled to pay or to any allowances except a rent allowance but may be allowed to receive an

allowance (hereinafter referred to as a "suspension allowance") not exceeding two-thirds of his pay as the Commissioner may direct.

(4) A police officer, who having been suspended from duty returns to duty shall receive, as from the date of his suspension, the difference between the pay and allowances to which he would have been entitled but for his suspension from duty and the suspension allowance (if any) awarded to him if —

- (a) it has been decided that he shall not be charged with an offence against the discipline; or
- (b) all charges that were proceeded with have been dismissed; or
- (c) he has been punished by withholding, stoppage, deferment or reduction of increments, a fine not exceeding 28 days' pay, severe reprimand, reprimand or admonition, unless the Commissioner directs that he shall not receive the said pay and allowances.

Complaints by police officers

16 (1) A police officer who considers that he has a grievance or just cause for complaint may apply for an interview with his Divisional Officer who shall enquire into the grievance or complaint, and if he finds it justified, shall take such steps as may be necessary to remedy it.

(2) A complainant aggrieved by the decision of the Divisional Officer shall be permitted to make representation to the Commissioner, in the first instance in writing.

Channel for complaints

17 (1) All petitions, applications or communications of any nature addressed by a police officer to the Commissioner shall be forwarded through the Divisional Officer.

(2) Nothing in these Regulations shall be construed so as to prevent a police officer addressing a petition to the Governor, but any such petition shall be forwarded through the Divisional Officer and the Commissioner.

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FIRST SCHEDULE DISCIPLINE CODE

The following shall be the offences against discipline, that is to say:—

1 Discreditable conduct, that is to say, if a police officer acts in a disorderly manner or in any manner prejudicial to discipline or reasonably likely to bring discredit on the reputation of the Police.

2 Insubordination or oppressive conduct, that is to say, if a police officer —

- (a) is insubordinate by word, act or demeanour; or
- (b) is guilty of oppressive or tyrannical conduct towards an inferior in rank; or
- (c) uses obscene, abusive, threatening or insulting language to any other police officer; or
- (d) wilfully or negligently makes any false complaint or statement against any police officer; or
- (e) assaults any other police officer; or
- (f) improperly withholds any report or allegation against any police officer.

3 Disobedience to orders, that is to say, if a police officer wilfully disobeys or without good and sufficient cause omits or neglects to carry out any lawful order, written or otherwise.

4 Neglect of duty, that is to say, if a police officer —

- (a) without good and sufficient cause neglects, or omits, promptly and diligently to attend to or to carry out anything which is his duty as a police officer; or
- (b) idles or gossips while on duty, on parade or while attending an official lecture or course of instruction; or
- (c) fails to work his beat in accordance with orders, or leaves his beat, point or other place of duty to which he has been ordered, without due permission or sufficient cause; or
- (d) by carelessness or neglect permits a prisoner to escape; or
- (e) fails, when knowing where any offender is to be found, to report the same, or to make due exertions for making him amenable to justice; or
- (f) fails to report any matter which it is his duty to report; or

- (g) fails to report anything which he knows concerning a criminal offence, or fails to disclose any evidence which he, or any other person within his knowledge, can give for or against any prisoner or defendant to a criminal charge; or
 - (h) omits to make any necessary entry in any police document; or
 - (i) without good and sufficient cause neglects, or omits, to carry out any instructions of a medical officer appointed by the Police or Government, or while absent from duty on account of sickness, is guilty of any act or conduct calculated to retard his return to duty; or
 - (j) becomes incapacitated for duty by his own misconduct or default; or
 - (k) sleeps while on duty.
- 5 Falsehood or prevarication, that is to say, if a police officer—
- (a) knowingly makes or signs any false statement in any official document; or
 - (b) wilfully or negligently makes any false, misleading or inaccurate statement; or
 - (c) without good and sufficient cause destroys or mutilates any official document or alters or erases any entry therein.
- 6 Breach of confidence, that is to say, if a police officer —
- (a) divulges any matter which is his duty to keep secret or confidential; or
 - (b) gives notice, directly or indirectly, to any person against whom any criminal warrant or summons has been or is about to be issued, except in the lawful execution of such criminal warrant or service of such summons; or
 - (c) without proper authority, communicates to the public press or, to any unauthorized person, any matter connected with the Police; or
 - (d) without proper authority, shows any person outside the Police any book or written or printed documents the property of the Government, which is not intended for publication to unauthorized persons; or

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- (e) makes any anonymous communications to the Government or Civil Authority or the Commissioner or any superior officer; or
 - (f) canvasses any member of the Government or Civil Authority with regard to any matter concerning the Police: or
 - (g) signs or circulates any petition or statement with regard to any matter concerning the Police, except through the proper channel of correspondence to the Commissioner or Government or in accordance with the constitution of the Police Association; or
 - (h) calls or attends any unauthorized meeting to discuss any matter concerning the Police; or
 - (i) submits any petition or canvasses any police officer in respect of promotion, discipline, transfers or appointments within the Police other than in accordance with any Orders made under the Police Act 1974 [*title 10 item 21*].
- 7 Corrupt practice, that is to say, if a police officer —
- (a) fails to account for or to make a prompt and true return of any money or property received by him in his official capacity, or in his capacity as an officer of any approved Police fund or association; or
 - (b) directly or indirectly promotes, subscribes to, solicits or receives any gratuity, present, subscription or testimonial without the consent of the Commissioner; or
 - (c) places himself under a pecuniary obligation to any licensee of premises licensed for the sale of intoxicating liquor or his agent, or to any person in respect of whom he may have to report or give evidence; or
 - (d) improperly uses his character and position as a police officer for his private advantage; or
 - (e) in his capacity as a police officer writes, signs or gives, without the prior approval of the Commissioner, any testimonial of character or other recommendation with the object of obtaining employment for any person or for supporting an application for the grant of a licence of any kind; or
 - (f) without the prior approval of the Commissioner, supports an application for the grant of a licence of any kind.

8 Unlawful or unnecessary exercise of authority, that is to say, if a police officer —

- (a) without good and sufficient cause makes any unlawful or unnecessary arrest; or
- (b) uses any unnecessary violence to any prisoner or person with whom he may be brought into contact in the execution of his duty; or
- (c) is uncivil to any member of the public.

9 Malingering, that is to say, if a police officer —

- (a) feigns or exaggerates any sickness or injury with a view to evading duty; or
- (b) reports sick without cause.

10 Concealment of disease, that is to say, if a police officer conceals any venereal or contagious disease from which he is suffering, or neglects or fails to report the fact that he is suffering from any such disease.

11 Absence without leave or being late for duty, that is to say, if a police officer without reasonable excuse is absent without leave from, or is late for, parade, court, or any other duty,

12 Uncleanliness, that is to say, if a police officer while on duty or while off in uniform in a public place is improperly dressed or is dirty or untidy in his person, clothing, or accoutrements. (A police officer shall be deemed to be untidy in his person as aforesaid if he wears his hair, sidewhiskers and/or moustache in a manner which is not in accordance with such Force instructions as may, from time to time, be given by the Commissioner.)

13 Damage to clothing or other articles supplied, that is to say, if a police officer —

- (a) wilfully or by carelessness causes any waste, loss, or damage to any article of clothing or accoutrements or to any book, document or other property of the Government issued out to him or used by him or entrusted to his care; or
- (b) fails to report any such waste, loss or damage, however caused.

14 Drunkenness, that is to say, if a police officer while on or off duty is unfit for duty through drink.

15 Drinking on duty or soliciting drink, that is to say, if a police officer —

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- (a) without the consent of an officer of the rank of Inspector or above, drinks, or receives from any other person, any intoxicating liquor while he is on duty; or
- (b) demands, or attempts to persuade any other person to give him or to purchase or obtain for him, any intoxicating liquor while he is on duty.

16 Entering licensed premises, that is to say, if without the permission of a superior officer a police officer enters—

- (a) while on duty any premises used for the manufacture or sale of intoxicants or any other premises where intoxicants are stored or distributed or dispensed or any place of public entertainment when his presence there is not required in the execution of his duty; or
- (b) any such premises (other than a Police Mess or Canteen) in uniform while off duty.

17 Lending or borrowing, that is to say, if a police officer lends money to a superior or borrows money from a subordinate or incurs debt without any reasonable prospect of repaying the same, or having incurred any debt makes no reasonable effort to repay the same.

18 Gambles, that is to say, if any police officer while on duty gambles.

19 Being an accessory to a disciplinary offence, that is to say, if a police officer connives at or is knowingly an accessory to any offence against discipline.

20 Desertion, that is to say, if any police officer deserts from the Police, or attempts so to desert.

21 Leaving Bermuda without permission, that is to say, if any police officer leaves, or attempts to leave Bermuda without the permission of the Commissioner.

[Amended by:

BR 19/1987

1997 : 37]