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THE POLICE AND PRISON OFFICERS (DISCIPLINE) REGULATIONS 2013

With the approval of the Administrator, the Chief Constable and Superintendent of Prisons makes the following Regulations, in exercise of the powers under section 11 of the Prisons Ordinance 1971(a) and section 9 of the Police Ordinance 2007(b)

PART 1

Preliminary

Citation and commencement

1. These Regulations may be cited as the Police and Prison Officers (Discipline) Regulations 2013 and come into force on 1 June 2013.

Interpretation

2.—(1) In these Regulations—

- “allegation” means a complaint or report that a police officer has committed a disciplinary offence;
- “the Crown” means Her Majesty in right of Her Government in the United Kingdom and in right of Her Administration in the Areas;
- “disciplinary action” means the misconduct procedure, the serious misconduct procedure or an appeal under Part 6;
- “disciplinary investigation” means an investigation conducted in accordance with Part 3;
- “disciplinary offence” has the meaning given in regulation 4;
- “Discipline Appeal Panel” means the Panel described in regulation 27(5) to hear an appeal from a decision of a Discipline Panel;
- “Discipline Code” means the code set out in Schedule 1;
- “Discipline Panel” means the panel described in regulation 23;
- “a Division” means a Division of the Service comprising the Akrotiri Sovereign Base Area or the Dhekelia Sovereign Base Area;
- “Divisional Commander” means the police officer in charge of one of the Divisions, and includes a police officer authorised to act on behalf of the Divisional Commander in the absence of that person;
- “harm test” has the meaning given in regulation 7(1);
- “investigating officer” means the person appointed under regulation 12 to conduct a disciplinary investigation;
- “investigation report” means the report of the investigating officer referred to in regulation 15.
- “management action” means action or advice intended to improve the conduct of the officer concerned;

- “misconduct” means a disciplinary offence;
- “misconduct procedure” means the procedure described in Part 4, where a penalty of severe reprimand, reprimand or admonition may be imposed;
- “misconduct meeting” means the meeting described in regulation 19;
- “the officer concerned” means the police officer in relation to whom there has been an allegation;
- “penalty” means one of the following punishments in order of severity—
- (a) dismissal;
 - (b) requirement to resign;
 - (c) reduction in rank;
 - (d) withholding, withdrawing or postponing yearly increments of pay;
 - (e) a fine not exceeding 20 days’ pay;
 - (f) severe reprimand;
 - (g) reprimand; or
 - (h) admonition;
- “police friend” means a member of the Service requested by the officer concerned to assist that officer in proceedings under these Regulations;
- “relevant lawyer” means a legally qualified person appointed by the officer concerned, at the officer’s own expense, to represent that officer in proceedings under these Regulations;
- “serious misconduct” means a disciplinary offence for which a penalty more severe than severe reprimand may be justified;
- “serious misconduct procedure” means the procedure described in Part 5, where a penalty up to and including dismissal may be imposed;
- “the Service” means the Police Service and includes the Prison Service;
- “supervising officer” means the police officer appointed under regulation 12 to supervise a disciplinary investigation;
- “suspension grounds” means the grounds for suspending a police officer specified in regulation 9(1).

(2) In these Regulations—

- (a) a reference to a police officer includes a police officer serving as a prison officer;
- (b) where an allegation relates to the conduct of a police officer serving as a prison officer, a function conferred on a Divisional Commander is to be construed as a function conferred on the Deputy Superintendent of Prisons.

PART 2

General

Application

3. (1) Subject to paragraph (2), these Regulations apply to all police officers.
- (2) These Regulations do not apply to expatriate officers, except where they confer a function or impose a duty on a police officer who is an expatriate officer.

Discipline Code

4. A police officer commits a disciplinary offence if—
- (a) the officer commits an offence specified in the Discipline Code; or
 - (b) the officer’s conduct contravenes the Discipline Code.

Notices and documents

5. Where any notice or document is to be given or supplied to the officer concerned under these Regulations it is to be—
- (a) given to the officer in person; or
 - (b) delivered to the officer’s last known address.

Outstanding or possible criminal proceedings

6. (1) Subject to this regulation and regulation 7, a disciplinary investigation or disciplinary action (as the case may be) is to commence without delay.

(2) Before authorising a disciplinary investigation or disciplinary action, the Deputy Chief Constable is to decide whether a disciplinary investigation or disciplinary action would prejudice criminal proceedings.

(3) If the criminal proceedings have been, or may be, in a Court in the Areas, the Deputy Chief Constable must consult the Attorney-General and Legal Adviser.

(4) For any period during which the Deputy Chief Constable considers a disciplinary investigation or disciplinary action would prejudice criminal proceedings, no proceedings under these Regulations are to take place.

(5) Where paragraph (4) applies, the Deputy Chief Constable may do one or both of the following—

- (a) recommend that the officer concerned be suspended in accordance with regulation 9;
- (b) authorise that a notice be sent to the officer concerned stating that proceedings may be commenced under these Regulations when the Deputy Chief Constable considers they can proceed without prejudicing criminal proceedings.

The harm test

7. (1) Information in documents which are stated to be subject to the harm test under these Regulations are not to be supplied to the officer concerned in so far as the person required to disclose information under these Regulations is satisfied that preventing disclosure is—

- (a) necessary for the purpose of preventing the premature or inappropriate disclosure of information that is relevant to, or may be used in, any criminal proceedings;
- (b) necessary for the purpose of the prevention or detection of crime, or the apprehension or prosecution of offenders;
- (c) necessary for the purpose of the prevention or detection of a disciplinary offence by other police officers, misconduct of employees of the Crown, persons in the service of the Crown or their apprehension for such matters;
- (d) justified on the grounds that providing the information would involve disproportionate effort in comparison to the seriousness of the allegations against the officer concerned; or
- (e) necessary and proportionate for the protection of the welfare and safety of any informant or witness.

(2) Where information in documents is not supplied to the officer concerned, no person may rely on that information in the conduct of disciplinary action.

(3) If a person authorised to commence disciplinary action under these Regulations considers that reliance on information in documents which has not been supplied to the officer concerned is necessary for the fair and equitable conduct of disciplinary action, no disciplinary action is to take place during the period that the information is withheld.

Assessment of conduct

8. (1) Where an allegation is made, a Divisional Commander is to assess whether, if proved, it would be a disciplinary offence requiring disciplinary action.

(2) In making an assessment under paragraph (1), a Divisional Commander—

- (a) may authorise a preliminary enquiry such as is appropriate to the circumstances of the case; and
- (b) is to take account of previous allegations in respect of the officer concerned where disciplinary action or management action was taken, as is reasonable having regard to all the circumstances of the case.

(3) The allegations referred to in paragraph (2)(b) include allegations about the conduct of the officer concerned before the day these Regulations come into force.

(4) Where a Divisional Commander decides that the allegation, if proved, does not amount to a disciplinary offence, the Divisional Commander may take—

- (a) no action; or
- (b) management action.

(5) If a Divisional Commander decides that the allegation, if proved, would amount to a disciplinary offence, the Divisional Commander, having regard to all the circumstances of the case, is to determine whether—

- (a) to authorise a disciplinary investigation; or
- (b) to commence disciplinary action under the misconduct procedure.

(6) A Divisional Commander must refer the allegation to the Deputy Chief Constable where paragraph (7) or (8) applies.

(7) This paragraph applies where a Divisional Commander considers that the allegation, if proved, would amount to serious misconduct.

(8) This paragraph applies if the allegation is that the officer concerned has committed a criminal offence.

(9) Following a referral under paragraph (6), and subject to regulation 6, the Deputy Chief Constable (DCC) must authorise a disciplinary investigation if the DCC determines that the allegation, if proved, would amount to serious misconduct.

(10) Deputy Chief Constable (DCC) or a Divisional Commander (DC) may recommend that the officer concerned be suspended under regulation 9, if the DCC or a DC considers the suspension grounds are satisfied.

Suspension

9. (1) The Chief Constable may suspend the officer concerned at any time on the grounds (“the suspension grounds”) that—

- (a) the allegation, if proved, would amount to a disciplinary offence and a penalty of dismissal or requirement to resign is likely to be imposed under the serious misconduct procedure;
- (b) it is in the public interest; or
- (c) it is necessary for the conduct of a disciplinary investigation.

(2) The Chief Constable must send an officer suspended under this regulation written notice of the suspension setting out the reasons why the suspension grounds are satisfied.

(3) The officer concerned or a police friend may make written representations against the suspension to the Chief Constable—

- (a) within a period of 7 days beginning with the day on which the notice of suspension is sent; or
- (b) at any time if the officer concerned reasonably believes that the circumstances relevant to the suspension grounds have changed.

(4) The Chief Constable must review the suspension as soon as reasonably practicable on —

- (a) receipt of representations under paragraph (3); or
- (b) being notified that the circumstances relevant to the suspension grounds have changed.

(5) An officer suspended under this regulation remains a member of the Service (in receipt of pay and allowances) and subject to the obligations, discipline and penalties of the Service, but during the period of suspension does not have the powers of a member of the Service.

PART 3

Disciplinary Investigations

Application and interpretation of Part 3

10. (1) This Part applies to the authorisation and conduct of a disciplinary investigation.

- (2) In this Part “the authorising officer” means—
- (a) a Divisional Commander, where a disciplinary investigation is authorised under regulation 8(5)(a); or
 - (b) the Deputy Chief Constable, where a disciplinary investigation is authorised under regulation 8(9).

Purpose of a disciplinary investigation

11. The purpose of a disciplinary investigation is to—

- (a) gather evidence to establish the facts of an allegation; and
- (b) establish whether there is a case to answer in respect of a disciplinary offence, or whether there is no case to answer.

Authorisation of a disciplinary investigation and appointment of investigating and supervising officers

12. (1) The authorising officer must—

- (a) authorise a disciplinary investigation in writing; and
- (b) record, in writing, the grounds on which the investigation is authorised.

(2) As soon as reasonably practicable after authorising a disciplinary investigation, the authorising officer must appoint a person —

- (a) to investigate the allegation (“the investigating officer”); and
- (b) to supervise the investigation (“the supervising officer”).

(3) The investigating officer and the supervising officer must—

- (a) have the appropriate level of skills, knowledge and experience to plan and manage the investigation; and
- (b) be of at least equal rank to the officer concerned.

(4) The investigating officer and the supervising officer must not—

- (a) be an interested party or a witness in respect of the allegation;
- (b) work directly or indirectly under the command of the officer concerned.

(5) The supervising officer may—

- (a) change the person appointed as investigating officer during the conduct of a disciplinary investigation;
- (b) authorise the appointment of an investigating officer from outside the Service, with the consent of the Chief Constable.

Notice of investigation

13. (1) The investigating officer must send a written notice to the officer concerned before commencing the disciplinary investigation.

(2) The notice must—

- (a) describe the allegation in sufficient detail for the officer concerned to understand its nature, and why, if proved, it would amount to a disciplinary offence;
- (b) inform the officer concerned that—
 - (i) there is to be a disciplinary investigation into the matter and the purpose of that investigation;
 - (ii) following the disciplinary investigation, disciplinary action may be taken and the possible penalties;
 - (iii) the officer may be represented by a police friend, or, where regulation 14(3) applies, a relevant lawyer;
 - (iv) the officer does not have to say anything, but it may harm the officer’s case if the officer does not mention something during the investigation which the officer later relies on during any disciplinary action;

- (v) the officer may send written submissions to the investigating officer within a period specified by the investigating officer; and
- (vi) the officer is required to attend an interview with the investigating officer, if requested.

Conduct of disciplinary investigation

14. (1) The investigating officer is to carry out such interviews and inspections as are necessary for the conduct of the disciplinary investigation and, in particular, may —

- (a) interview and take a statement from a person the investigating officer considers may provide information or evidence relevant to the allegation;
- (b) interview and take a statement from the officer concerned; and
- (c) consider a document relevant to the allegation.

(2) Subject to paragraph (3), where the officer concerned is interviewed, that officer must be given reasonable notice of the interview, and informed that a police friend or a relevant lawyer, or both, may accompany the officer.

(3) The officer concerned may only be accompanied by a relevant lawyer where the investigating officer reasonably believes that—

- (a) disciplinary action against the officer concerned may be taken under the serious misconduct procedure; or
- (b) criminal proceedings may be taken against the officer concerned in respect of facts arising from the disciplinary offence under investigation.

(4) A police friend or a relevant lawyer may not answer any questions put to the officer concerned during an interview.

(5) The investigating officer must make regular reports on the progress of the investigation to the supervising officer and, subject to paragraph (6), is to complete the investigation within the period of 60 days, beginning with the date the investigating officer is appointed.

(6) Where paragraph (7) applies, the supervising officer may extend and further extend the period of 60 days.

(7) This paragraph applies if—

- (a) the investigating officer makes an application to the supervising officer setting out the reasons for an extension; and
- (b) the supervising officer is satisfied there are grounds for an extension or a further extension.

(8) The supervising officer may require the investigating officer to make a preliminary report at any time during the investigation.

Investigation report

15. (1) On completion of the disciplinary investigation, the investigating officer must, as soon as reasonably practicable, send a written report to the supervising officer.

(2) The report must—

- (a) provide an accurate summary of the evidence;
- (b) attach or refer to any relevant documents;
- (c) indicate whether in the opinion of the investigating officer—
 - (i) there is a case to answer in respect of a disciplinary offence; or
 - (ii) there is no case to answer.

Decision following investigation report

16. (1) On receipt of the report the supervising officer must decide—

- (a) to commence disciplinary action under Part 4 or Part 5, as the supervising officer considers appropriate to the case;
- (b) to recommend to the Divisional Commander of the officer concerned that management action is taken; or
- (c) that there is no case to answer.

(2) For the purpose of paragraph (1), the supervising officer must take account of the investigation report, but is not bound by the opinion of the investigating officer.

(3) If the supervising officer considers that there is evidence that a criminal offence has been committed in the Areas, the investigation report must be submitted to the Attorney General and Legal Adviser, and the commencement of disciplinary action is subject to regulation 6.

(4) The supervising officer must give written notice to the officer concerned of the decision under this regulation.

PART 4

Misconduct procedure

Application and interpretation of Part 4

17. (1) This Part applies to disciplinary action under the misconduct procedure.

(2) In this Part “the appropriate officer” means—

- (a) the supervising officer, if there has been a disciplinary investigation;
- (b) a Divisional Commander, if there has not been a disciplinary investigation.

Misconduct procedure: notice

18. (1) The appropriate officer must give written notice to the officer concerned that disciplinary action under the misconduct procedure is to be taken.

(2) The notice must—

- (a) describe the allegation in sufficient detail for the officer concerned to understand its nature and why, if proved, it would amount to a disciplinary offence;
- (b) inform the officer concerned that—
 - (i) the matter is to be dealt with under the misconduct procedure and specify the possible penalties;
 - (ii) subject to paragraph (5), if, before notice of the misconduct meeting is sent under regulation 19, new information about the allegation is disclosed such that, if proved, it would be a disciplinary offence for which a penalty more serious than severe reprimand may be imposed, disciplinary action may be taken under the serious misconduct procedure;
 - (iii) the officer may appoint a police friend; and
 - (iv) the officer does not have to say anything, but it may harm the officer’s case if the officer does not mention something at this stage which the officer later relies on at a misconduct meeting or during an appeal under Part 6; and
- (c) subject to paragraph (2)(b)(iv), invite the officer concerned to make written representations within a specified period (of not less than 7 days beginning with day on which the notice is sent) in respect of the matters prescribed in paragraph (3).

(3) The prescribed matters are—

- (a) where the officer accepts the allegation amounts to a disciplinary offence, any representations to be considered in mitigation;
- (b) where the officer disputes the allegation, those parts that are disputed and the officer’s account of the relevant events.

(4) On receipt of the notice the officer concerned must, within the period specified in the notice,—

- (a) make written representations to the appropriate officer; or
- (b) notify the appropriate officer in writing that the officer does not wish to make representations about the prescribed matters.

(5) Paragraph (2)(b)(ii) does not apply where there has been a disciplinary investigation.

Misconduct meeting

19. (1) A Divisional Commander is to determine whether or not the allegation amounts to a disciplinary offence at a misconduct meeting.

(2) The misconduct meeting must be arranged as soon as reasonably practicable after the appropriate officer receives the written representations referred to in regulation 18(2)(c).

(3) But, if the officer concerned does not send written representations or notification within the period specified in the notice given under regulation 18(2), the Divisional Commander may arrange a misconduct meeting.

(4) The Divisional Commander must give the officer concerned a period of at least 7 days' written notice of a misconduct meeting, beginning with the day on which the notice is sent and ending on the day of the meeting.

(5) The notice must—

- (a) state the date, time and place of the meeting;
- (b) inform the officer concerned that the officer may be accompanied to the meeting by a police friend.

(6) At the same time as sending the notice, and subject to the harm test, the Divisional Commander must send the officer concerned copies of documents relevant to the allegation and on which the Divisional Commander intends to rely in support of the allegation, unless these have already been sent to the officer concerned.

(7) If the officer concerned wishes to rely on any written statements (including witness statements) or other documents in defence of the allegation, they must be delivered to the Divisional Commander before the misconduct meeting.

(8) The date of the misconduct meeting may be changed at the reasonable request of the officer concerned or by the Divisional Commander, but may not be changed more than once, unless there are exceptional circumstances.

(9) The misconduct meeting may proceed in the absence of the officer concerned if—

- (a) the officer has notified the Divisional Commander that the officer is not attending;
- (b) the Divisional Commander is satisfied there is no good reason for the officer's absence; or
- (c) the officer is unable to attend because the officer is in prison or custody outside the Areas.

(10) Where the officer concerned does not attend the meeting the officer may nevertheless be represented by a police friend.

(11) At the misconduct meeting the Divisional Commander must give the officer concerned the opportunity to make oral representations in respect of both the allegation and the penalty, unless the meeting proceeds in the absence of the officer concerned.

(12) The Divisional Commander may hear oral evidence and representations from a police friend, but is not required to hear oral evidence or representations from any other person or to invite any other person to the misconduct meeting.

Decision following misconduct meeting

20. (1) The Divisional Commander must establish the facts of the case and decide whether the allegation amounts to a disciplinary offence.

(2) The Divisional Commander may not find the allegation is a disciplinary offence unless—

- (a) the allegation is proved on the balance of probability; or
- (b) the officer concerned admits the allegation.

(3) If the Divisional Commander finds the allegation amounts to a disciplinary offence the following penalties may be imposed—

- (a) severe reprimand;
- (b) reprimand; or
- (c) admonition.

(4) The Divisional Commander may give the decision orally at the misconduct meeting or by a written notice sent as soon as reasonably practicable after the meeting.

(5) If a decision is given orally at the misconduct meeting, it must be confirmed by a written notice sent to the officer concerned within a period of 7 days, beginning with the day of the misconduct meeting.

(6) The Divisional Commander must give reasons for the decision in the written notice.

PART 5

Serious misconduct procedure

Application and interpretation of Part 5

21. (1) This Part applies to disciplinary action under the serious misconduct procedure;

(2) In this Part “presiding officer” means the Deputy Chief Constable, or the police officer appointed by the Deputy Chief Constable under regulation 23(3), who presides over the Discipline Panel.

Serious misconduct: notice

22. (1) The supervising officer must give a written notice to the officer concerned that the allegation, if proved, would amount to a disciplinary offence.

(2) The notice must—

(a) describe the allegation in sufficient detail for the officer concerned to understand its nature and why, if proved, it would amount to a disciplinary offence;

(b) inform the officer concerned that—

(i) the matter is to be dealt with under the serious misconduct procedure and the possible penalties;

(ii) the officer may appoint a police friend or, at the officer’s own expense, a relevant lawyer (or both);

(iii) the officer does not have to say anything, but it may harm the officer’s case if the officer does not mention something at this stage which the officer later relies on at the hearing by the Discipline Panel or during an appeal under Part 6.

(c) subject to paragraph (2)(b)(iii), invite the officer concerned to make written representations within a specified period (of not less than 14 days, beginning with the day on which the notice is sent) in respect of the matters prescribed in paragraph (3).

(3) The prescribed matters are—

(a) where the officer accepts the allegation amounts to a disciplinary offence, any representations to be considered in mitigation;

(b) where the officer disputes the allegation, those parts that are disputed and the officer’s account of the relevant events.

(4) On receipt of the notice the officer concerned must, within the period specified in the notice,—

(a) make written representations to the supervising officer; or

(b) notify the supervising officer in writing that the officer does not wish to make representations about the prescribed matters.

Composition of Discipline Panel

23. (1) A Discipline Panel is to determine whether or not the allegation amounts to a disciplinary offence at a hearing.

(2) Subject to the following provisions, the Discipline Panel is to consist of the Deputy Chief Constable as presiding officer, and at least 1 other police officer appointed by the presiding officer.

(3) The Deputy Chief Constable may appoint another police officer as presiding officer.

- (4) A police officer appointed under paragraph (2) or (3)—
 - (a) must be at the rank of Chief Inspector or above;
 - (b) must be senior in rank to the officer concerned; and
 - (c) must not be the investigating officer, the supervising officer, an interested party or a witness.

(5) The Deputy Chief Constable may appoint a person from outside the Service to the Discipline Panel, in addition to the police officer or officers referred to in paragraph (2).

(6) The Deputy Chief Constable must be satisfied that a person appointed under paragraph (5)—

- (a) has sufficient seniority, skills and experience to decide the case; and
- (b) has had no previous involvement in the case.

Notice of hearing by Discipline Panel

24. (1) A hearing by the Discipline Panel must be arranged as soon as reasonably practicable after the supervising officer receives the written representations referred to in regulation 22(2)(c).

(2) But, if the officer concerned does not send written representations or notification within the period specified in the notice given under regulation 22(2), the supervising officer may arrange a hearing.

(3) The officer concerned must be given a period of at least 14 days' written notice of a hearing, beginning with the day on which the notice is sent and ending on the day of the hearing.

(4) The notice must—

- (a) state the date, time and place of the hearing;
- (b) inform the officer concerned that—
 - (i) the officer may be accompanied to the hearing by a police friend or a relevant lawyer (or both); and
 - (ii) either a police friend or a relevant lawyer may represent the officer at the hearing.

(5) At the same time as sending the notice, and subject to the harm test, the supervising officer, must send the officer concerned—

- (a) a list of documents relevant to the allegation which are to be disclosed to the Discipline Panel; and
- (b) a copy of any of those documents which have not been supplied already to the officer concerned.

(6) If the officer concerned wishes to rely on other relevant documents (including witness statements) or call any witness to give oral evidence, the officer must notify the supervising officer, and deliver copies of the documents, before the beginning of a period of 7 days ending with the day of the hearing.

(7) The supervising officer may reduce the period referred to in paragraph (6), but copies of the documents the officer concerned wishes to rely on must be delivered before the day of the hearing.

(8) The date of the hearing may be changed at the reasonable request of the officer concerned or by the supervising officer, but may not be changed more than once, unless there are exceptional circumstances.

(9) Except for an assessment required under the harm test, the functions of the supervising officer specified in this regulation may be carried out by a person authorised by the supervising officer, but that person must not be a member of the Discipline Panel.

Procedure at hearing by Discipline Panel

25. (1) Subject to this regulation, the presiding officer may decide the procedure at the hearing.

(2) The hearing must not proceed unless the officer concerned has been notified and sent the relevant documents in accordance with regulation 24.

(3) The hearing may be adjourned or postponed if the presiding officer considers it necessary or expedient.

- (4) The hearing may proceed in the absence of the officer concerned if—
- (a) the officer has notified the presiding officer that the officer is not attending;
 - (b) the presiding officer is satisfied there is no good reason for the officer's absence; or
 - (c) the officer is unable to attend because the officer is in prison or custody outside the Areas.
- (5) Where the officer concerned does not attend the hearing the officer may nevertheless be represented by a police friend or a relevant lawyer, and both a police friend and a relevant lawyer may attend the hearing.
- (6) The case against the officer concerned is to be brought by a person appointed by the supervising officer.
- (7) The person appointed under paragraph (6)—
- (a) must not be the investigating officer, the supervising officer, an interested party or a witness;
 - (b) may be a lawyer or other person with a legal qualification from within or outside the Service, whether or not the officer concerned is represented by a relevant lawyer.
- (8) The officer concerned must be given the opportunity to make oral representations unless the hearing proceeds in the officer's absence in accordance with paragraph (4).
- (9) The person representing the officer (or the officer concerned if there is no representative) may address the proceedings to do any or all of the following—
- (a) put the case of the officer concerned;
 - (b) sum up the case;
 - (c) respond on behalf of the officer concerned to any view expressed during the hearing;
 - (d) make representations concerning any aspect of proceedings under these Regulations;
 - (e) subject to paragraph (10)(a), ask questions of witnesses; and
 - (f) confer with the officer concerned during the proceedings.
- (10) The presiding officer is to determine—
- (a) whether or not a question should or should not be put to a witness; and
 - (b) subject to paragraph (11), whether a witness may be called to give oral evidence.
- (11) The presiding officer must permit a witness to give oral evidence—
- (a) if a member of the Discipline Panel considers that evidence in a witness statement is relevant to the allegation; and
 - (b) that evidence is disputed by—
 - (i) a member of the Discipline Panel; or
 - (ii) the officer concerned.
- (12) A police friend or a relevant lawyer may not answer any question put to the officer concerned during the hearing.
- (13) Where the presiding officer decides that a police officer is to be called to give oral evidence, it is a disciplinary offence under paragraph 5(a) of the Discipline Code if that officer does not attend or, without good reason, fails to answer questions which the presiding officer determines should be put to that officer.

Decision following hearing by Discipline Panel

26. (1) The Discipline Panel must establish the facts of the case and decide whether the allegation amounts to a disciplinary offence.

- (2) The Discipline Panel may not find the allegation amounts to a disciplinary offence unless—
- (a) the allegation is proved on the balance of probability; or
 - (b) the officer concerned admits the allegation.
- (3) The decision of the Discipline Panel is to be taken by majority vote (in the case of a Panel of 2 or 4, the presiding officer is to have the casting vote if necessary) but the Discipline Panel is not to indicate whether the decision was taken by majority or unanimously.
- (4) Subject to paragraph (8), if the Discipline Panel finds the allegation amounts to a disciplinary offence it may impose the penalty it considers appropriate.
- (5) The Discipline Panel may give the decision orally at the hearing or by a written notice as soon as reasonably practicable after the hearing.
- (6) If the decision is given orally at the hearing it must be confirmed by a written notice sent to the officer concerned within a period of 7 days, starting with the day of the hearing.
- (7) The Discipline Panel must give reasons for its decision in the written notice.
- (8) If the Discipline Panel decides that dismissal is the appropriate penalty it may recommend that the Chief Constable dismisses the officer concerned.
- (9) The Chief Constable may not dismiss the officer in accordance with regulation 8 of the Police and Prison Officers (General) Regulations 2007(c)—
- (a) until the time limit for an appeal under Part 6 has expired; or
 - (b) where the officer appeals, until after the appeal is determined.

PART 6

Appeals

Appeal from a decision of a Divisional Commander or a Discipline Panel

27. (1) The officer concerned may appeal from a decision of a Divisional Commander following a misconduct meeting or a decision of a Discipline Panel (“a relevant decision”).
- (2) The only grounds of appeal are—
- (a) the finding or penalty was unreasonable;
 - (b) the Divisional Commander or the Discipline Panel did not consider all the relevant evidence;
 - (c) there was a serious breach of procedures set out in these Regulations which materially affected the outcome of the disciplinary action.
- (3) The notice of appeal must be in writing and received by the relevant person within a period of 7 days, starting with the day on which the officer concerned is sent the written notice of the relevant decision.
- (4) An appeal from a relevant decision of a Divisional Commander is to the Deputy Chief Constable.
- (5) An appeal from a relevant decision of a Discipline Panel is to a Discipline Appeal Panel composed of the Chief Officer and the Chief Constable.
- (6) The Chief Officer may appoint a person from outside the Service to the Discipline Appeal Panel as an additional member of the Discipline Appeal Panel.
- (7) The Chief Officer must be satisfied that a person appointed under paragraph (6)—
- (a) has sufficient seniority, skills and experience to decide the case; and
 - (b) has had no previous involvement in the case.
- (8) In this regulation and regulation 28 “the relevant person” is—
- (a) the Deputy Chief Constable in the case of an appeal from a relevant decision of a Divisional Commander; or
 - (b) the Chief Constable in the case of an appeal from a relevant decision of a Discipline Panel.

Appeal: procedure

28. (1) The officer concerned may make additional written representations to the relevant person, within a period of 14 days, starting with the day the notice of appeal referred to in regulation 27 is sent.

(2) If the officer concerned wishes to make oral representations, the officer must inform the relevant person, in writing, within the period specified in paragraph (1).

(3) The Deputy Chief Constable or the Discipline Appeal Panel, as the case may be, must hear oral representations from the officer concerned if the officer so requests in accordance with paragraph (2), but are not required to hear oral representations from any other person.

(4) Subject to paragraph (5), an oral hearing under paragraph (2) must be arranged as soon as reasonably practicable.

(5) The officer concerned must be given—

- (a) a period of at least 7 days' written notice of an oral hearing by the Deputy Chief Constable;
- (b) a period of at least 14 days' written notice of an oral hearing by the Discipline Appeal Panel.

(6) The periods referred to in paragraph (5) begin on the day the notice is sent and end on the day of the hearing.

(7) The officer may be accompanied at an oral hearing by a police friend (or a relevant lawyer, or both in the case of an oral hearing by the Discipline Appeal Panel).

Decision on appeal

29. (1) Subject to paragraphs (2) and (3), the Deputy Chief Constable or the Discipline Appeal Panel, as the case may be, may do one or more of the following—

- (a) uphold a finding that the officer concerned has committed a disciplinary offence;
- (b) uphold a penalty imposed;
- (c) set aside a finding that the officer concerned has committed a disciplinary offence;
- (d) set aside a penalty;
- (e) order a redetermination at a misconduct meeting or a Discipline Panel;
- (f) impose another penalty (whether more or less severe);
- (g) take management action.

(2) A more severe penalty may be imposed only if the officer concerned is given notice and the opportunity to make written and oral representations.

(3) The Deputy Chief Constable may only—

- (a) impose a penalty specified in regulation 20(3);
- (b) order a redetermination under the misconduct procedure.

(4) A decision of a Discipline Appeal Panel is to be taken by majority vote (in the case of a Panel of 2, the Chief Officer is to have the casting vote, if necessary) but the Discipline Appeal Panel is not to indicate whether the decision was taken by majority or unanimously.

(5) The decision following an appeal under this Part may be given orally at the hearing or by written notice as soon as reasonably practicable after the hearing.

(6) If the decision is given orally at the hearing it must be confirmed by a written notice sent to the officer concerned within a period of 7 days, starting with the day of the hearing.

(7) The Deputy Chief Constable or the Discipline Appeal Panel, as the case may be, must give reasons for the decision in the written notice.

(8) The decision following an appeal under this Part is final.

PART 7

Revocations and transitional provisions

Revocations

30. Subject to regulation 31, the instruments set out in Schedule 2 are revoked.

Transitional provisions

31. (1) Where the Deputy Chief Constable has appointed an investigation officer under regulation 8 of the Police (Discipline) Regulations 1967 (the “1967 Regulations”) before the day these Regulations come into force—

- (a) nothing in these Regulations applies; and
- (b) the instruments referred to in regulation 30 continue to have effect.

(2) Where a disciplinary investigation or disciplinary action under these Regulations relates to conduct before the date these Regulations came into force, nothing in these Regulations makes the conduct a disciplinary offence if it would not have been an offence against discipline under the 1967 Regulations.

SCHEDULE 1

Sections 2 and 4

Discipline Code

Preliminary

1. (1) This code applies to the conduct of a police officer whether on or off duty.
- (2) A police officer must behave with honesty and integrity at all times.

Criminal and other discreditable conduct

2. (1) A police officer commits an offence under this code if the officer—
 - (a) is convicted of a criminal offence by a competent court in any jurisdiction, with the exception of a single conviction for a minor traffic offence for which the maximum penalty is a fine of not more than €1,500; or
 - (b) engages in conduct which—
 - (i) brings, or is likely to bring, discredit to the reputation of the Service; or
 - (ii) is prejudicial to the discipline of the Service.
- (2) A police officer must report any action taken against the officer for a criminal offence, any conditions imposed on that officer by a competent court in any jurisdiction, or a penalty notice imposed in any jurisdiction.

Lawful exercise of authority

3. (1) A police officer must treat a member of the public with tolerance and respect.
- (2) A police officer must not—
 - (a) give an order or instruction which that officer knows to be unlawful;
 - (b) make an unlawful or unnecessary arrest; or
 - (c) use unnecessary force in the execution of duty.

Equality and diversity

4. A police officer must not unlawfully or unfairly discriminate against, bully, harass or victimise—
 - (a) a member of the Service;
 - (b) an employee of the Crown or a person in the service of the Crown;
 - (c) any other person the officer encounters (including a member of the public) in the course of duty.

Duties and orders

5. A police officer must not,—

- (a) without good reason,—
 - (i) disobey, neglect or fails to perform a lawful order or instruction;
 - (ii) be absent without leave or late for duty;
 - (iii) contravene a provision of the Police Ordinance 2007, Service instructions or Service policies;
- (b) feign or exaggerate sickness or injury with a view to evading duty; or
- (c) report sick without being unfit for duty.

Corrupt practices

6. (1) A police officer must not—

- (a) receive or pay a bribe;
- (b) directly or indirectly solicit or receive any gratuity, gift or subscription, or solicit a testimonial, without the consent of the Chief Constable or the Chief Officer; or
- (c) improperly use the office of a police officer—
 - (i) for private advantage;
 - (ii) to assist or recommend a person—
 - (aa) to obtain a licence;
 - (bb) for employment in the Service; or
 - (cc) for employment by the Crown or any other person.

(2) A police officer must—

- (a) declare an interest an officer may have in any matter concerning the granting or renewal of a licence which the police may have to grant or give evidence about;
- (b) account for money or property received in that officer's official capacity, or in the capacity as an officer of an approved Service fund or association.

False statements

7. A police officer must not—

- (a) make or sign a statement the officer knows to be inaccurate, misleading or untrue;
- (b) without authority, destroy an official document or alter or delete any part of it.

Confidentiality

8. A police officer must not—

- (a) without authority, disclose to the public, press or any other person a matter or document relating to the Service;
- (b) make an anonymous communication about a matter relating to the Service;
- (c) sign or circulate a petition or statement with regard to a matter relating to the Service, except through the proper channel of correspondence to the Chief Constable, Chief Officer or Administrator, or in accordance with the constitution of the Sovereign Base Areas Police Association;
- (d) call or attend an unauthorised meeting to discuss a matter relating to the Service; or
- (e) submit a petition or canvass a member of the Service in respect of promotion, discipline, transfers or appointments, other than in accordance with Service policy or instructions.

Challenging and reporting improper conduct

9. A police officer must report, challenge or take appropriate action against another police officer for—

- (a) an offence specified in this code; and
- (b) conduct which contravenes conduct specified in this code.

SCHEDULE 2

Section 30

Revocations

<i>Name of instrument</i>	<i>Public instrument number</i>
Police (Discipline) Regulations 1967	85/1967
Notice issued under section 12(1)(b) of the Prisons Ordinance 1971	60/1971
Police and Prison Officers (Discipline) (Amendment) Regulations 1999	37/1999
Police and Prison Officers (Discipline) (Amendment) Regulations 2000	1/2000

Dated this 26th day of April 2013.

With the approval of the Administrator,

M. B. Matthews

Chief Constable and Superintendent of Prisons,
Sovereign Base Areas.

(SBA/AG/2/CR/187/2)

Notes

- (a) Ordinance 11/1971; section 11 was amended by section 5 of Ordinance 14/2005.
- (b) Ordinance 6/2007.
- (c) P.I. 26/2007; regulation 8 was amended by regulation 2 of P.I. 13/2009.

EXPLANATORY NOTE

(This note is not part of the Regulations)

Introduction

1. This explanatory note relates to the Police and Prison Officers (Discipline) Regulations 2013 (“the Regulations”). It has been prepared by the Office of the Attorney-General and Legal Adviser in order to assist the reader of the Regulations. It does not form part of the Regulations.
2. The note should be read in conjunction with the Regulations. It is not meant to be a comprehensive description of the Regulations. Accordingly, not all regulations are referred to in the note.

Purpose and summary of the Regulations

3. The Regulations establish a new disciplinary system for the Sovereign Base Areas’ Police Service. They apply to all police officers recruited in Cyprus. There is a combined police and prison service in the Areas, so the Regulations also apply to police officers serving as prison officers. The previous disciplinary system was established under the Police (Discipline) Regulations 1967. The Regulations revoke those regulations.
4. There are two disciplinary procedures. The misconduct procedure (described in Part 4) is for less serious disciplinary offences and is conducted by a Divisional Commander. The maximum penalty which may be imposed is a severe reprimand. The serious misconduct procedure (described in Part 5) is for more serious disciplinary offences. The allegation is heard by a Discipline Panel which may impose any penalty up to and including dismissal. There is a right of appeal (described in Part 6) under both procedures.

Preliminary and general provisions

5. Parts 1 and 2 contain preliminary and general provisions. Regulation 2 defines terms used in the Regulations.
6. Regulation 4 gives effect to the Discipline Code set out in Schedule 1. The Discipline Code is a code of conduct for police officers. A breach of the code is a disciplinary offence resulting in disciplinary action being taken in accordance with the procedures in the Regulations.
7. Disciplinary proceedings (ie an investigation or action under misconduct or serious misconduct procedure) must commence as soon as possible after an allegation of a disciplinary offence, subject to any prejudice to criminal proceedings. Under regulation 6 the Deputy Chief Constable is required to consider whether disciplinary proceedings would prejudice criminal proceedings, and if so disciplinary proceedings are not to take place until they can proceed without such prejudice.
8. Regulation 7 sets out ‘the harm test’. There is no requirement to disclose information to an officer alleged to have committed a disciplinary offence if the harm test is satisfied; for example if disclosure would prejudice criminal proceedings or disciplinary action taken against another person. If information is not disclosed it may not be relied upon when taking disciplinary proceedings. If information which is not disclosed is necessary (in the opinion of the officer commencing disciplinary proceedings) for the fair and equitable conduct of the proceedings they are not to take place. In effect this means that proceedings have to be stayed pending a time when the information can be disclosed, or no action taken.
9. When an allegation is made about the conduct of an officer, a Divisional Commander is required by regulation 8 to make an assessment of the conduct. After making the necessary preliminary enquiries, a Divisional Commander may commence disciplinary action under the misconduct procedure or authorise a disciplinary investigation. The policy intent is that formal disciplinary investigation under the Regulations will not be required for most minor disciplinary offences. Where a Divisional Commander considers that the disciplinary offence, if proved, may merit a punishment more serious than severe reprimand, the case is referred to the Deputy Chief Constable.
10. Regulation 9 makes provision for suspending an officer under investigation for a disciplinary offence. An officer may be suspended only if the disciplinary offence, if substantiated, would be likely to attract a penalty of dismissal or requirement to resign, it is in the public interest or is necessary for the conduct of an investigation. There is a right to request a review of a decision to suspend.

Disciplinary investigations

11. The procedure for a disciplinary investigation is set out in Part 3.
12. The authorising officer (who will be either the Deputy Chief Constable or a Divisional Commander) must appoint an investigating officer and a supervising officer in accordance with regulation 12. The investigating officer must send a notice to the officer under investigation in accordance with the provisions in regulation 13.
13. The investigating officer may interview an officer under investigation and any other person relevant to the allegation. When interviewed, the officer may be accompanied by a fellow officer (“a police friend”), and if under investigation for a serious disciplinary offence may be accompanied by a lawyer, appointed at the officer’s own expense (regulation 14).
14. On completion of the investigation the investigating officer reports to the supervising officer (regulation 15), who then makes a decision about whether disciplinary action should be taken and, if so, under which procedure (regulation 16).

Misconduct procedure

15. The procedure for disciplinary action under the misconduct procedure is set out in Part 4.
16. A notice is sent to an officer alleged to have committed a disciplinary offence in accordance with the provisions set out in regulation 18. In most cases the notice will be sent by the Divisional Commander, but where there has been a disciplinary investigation the notice is sent by the supervising officer who has decided that disciplinary action should be taken. The officer alleged to have contravened the Discipline Code is directed to state whether he or she accepts that a disciplinary offence has been committed, and if so may make representations in mitigation. If the officer disputes the allegation, the officer is directed to state which part is disputed. The notice informs the officer that whilst he or she is not required to say anything it may harm their case if they do not mention something they later rely upon.
17. Under regulation 19, a Divisional Commander must give an officer at least 7 days’ notice of a meeting to hear the allegation. At the same time the officer must be sent copies of all documents the Divisional Commander intends to rely on (unless they have been sent already to the officer). This requirement is subject to the harm test described above. The officer may be accompanied to the meeting by a police friend.
18. A decision about whether an officer has committed a disciplinary offence is made on the balance of probability (regulation 20). A penalty of severe reprimand, reprimand or admonition may be imposed. A Divisional Commander may give a decision orally at the meeting, or in writing thereafter.

Serious misconduct procedure

19. The procedure for disciplinary action under the serious misconduct procedure is set out in Part 5.
20. The officer who supervised the disciplinary investigation must send a notice to the officer alleged to have committed a disciplinary offence in accordance with regulation 22. As with the misconduct procedure, the officer is directed to state whether he or she accepts that a disciplinary offence has been committed, and, if so, to make representations in mitigation. If the officer disputes the allegation, the officer is directed to state which part is disputed. The notice informs the officer that whilst he or she is not required to say anything at this stage it may harm their case if they do not mention at this stage something they later rely upon.
21. The allegation is heard by a Discipline Panel constituted in accordance with regulation 23. The Panel normally consists of the Deputy Chief Constable as presiding officer and a least 1 other police officer of the rank of Chief Inspector or above, and more senior in rank to the officer accused of the disciplinary offence. There is a power for the Deputy Chief Constable to appoint another officer as presiding officer and a person from outside the Service to sit on the Panel. This would normally be a senior official from the Administration, but could be, for example, a police officer from the UK.
22. Under regulation 24, the officer must be given at least 14 days’ notice of the hearing. At the same time the officer must be sent a list of all the documents relevant to the allegation and a copy of all documents which have not been sent already to the officer. This requirement is subject to the harm test described above. The officer may be accompanied at the hearing by a police friend, a lawyer (appointed at the officer’s expense), or both.

23. Regulation 25 provides that presiding officer determines the procedure at the hearing, but the officer accused of the disciplinary offence must be given the opportunity to make oral representations. A police friend or a lawyer may put the case for the officer, ask questions of witness etc., but may not answer any questions put to the officer.

24. A decision about whether an officer has committed a disciplinary offence is made on the balance of probability (regulation 26). The Panel may give a decision orally at the hearing or in writing thereafter. The Panel may impose a penalty of up to and including requirement to resign and recommend dismissal. The Chief Constable is required to confirm a recommendation by the Discipline Panel to dismiss an officer, and may not take a decision to dismiss until after the time limit for an appeal has expired or, where there is an appeal, after the appeal is determined.

Appeals

25. The procedure for an appeal from a decision of a Divisional Commander and of a Discipline Panel is set out in Part 6.

26. Under regulation 27 an officer has 7 days to appeal starting from the date the officer receives written notice of the decision. The only grounds of appeal are unreasonable finding or penalty, failure to consider all the evidence, and a serious breach of procedures under the Regulations which materially affected the outcome of the case.

27. An appeal under the misconduct procedure is to the Deputy Chief Constable and under the serious misconduct procedure to the Discipline Appeal Panel composed of the Chief Constable and the Chief Officer. In addition, the Chief Officer may appoint a person from outside the Service to sit on the Panel.

28. After lodging an appeal an officer has a further 14 days to make written representations (regulation 28). The persons determining the appeal must hear oral representations if the officer who has appealed so requests.

29. On appeal, a finding that there has been a disciplinary offence may be set aside as may a penalty imposed (regulation 29). Another penalty (more or less severe) may be imposed, but the Deputy Chief Constable may not impose a penalty more severe than severe reprimand. An order that the case be redetermined may also be made. The decision of the Deputy Chief Constable or the Discipline Appeal Panel is final. There is no further internal right of appeal.