

# **Police Force Ordinance**

## **(Cap. 232)**

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To amend and consolidate the law relating to the police force.

[20 August 1948] *G.N.A. 201 of 1948*

*(Format changes—E.R. 2 of 2018)*

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persons who, at the commencement of this Ordinance, are serving in the police force established under any Ordinance repealed by this Ordinance and service under any such repealed Ordinance shall for the purpose of pay, allowances, gratuities and pensions, be deemed to be service under this Ordinance.

**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 S.S. 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*)

**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*)

**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.

**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.

**7. Delegation of powers**

- (1) Save where the contrary intention appears from the context of any enactment and subject to any special instructions of the Commissioner, a deputy commissioner may exercise or discharge any of the powers or duties which the Commissioner by any enactment is entitled to exercise or required to discharge.
- (2) Save where the contrary intention appears from the context of any enactment and subject to any special instructions of the Chief Executive, the Commissioner may authorize any police officer not below the rank of station sergeant, or any public officer attached to the police force not below a grade or rank equivalent to that of station sergeant, by name, office or appointment, to exercise or discharge any of the powers or duties which the Commissioner by any enactment is entitled to exercise or required to discharge. (*Amended 42 of 1977 s. 3; 76 of 1999 s. 3*)
- (3) For the avoidance of doubt, nothing in this section shall be deemed to derogate from any power of delegation conferred upon the Commissioner by the provisions of any other enactment.

*(Added 53 of 1960 s. 2)*

**8. Prohibition against police officer being a member of a trade union**

- (1) It shall not be lawful for a police officer to be a member of any trade union and any police officer who contravenes this provision shall be disqualified from continuing to be a member of the police force.
- (2) If any question arises whether a body is a trade union to which this section applies the question shall be determined by

the Registrar of Trade Unions appointed under section 3 of the Trade Unions Ordinance (Cap. 332).

- (3) The Commissioner may—
- (a) establish such associations as he may think fit, composed only of police officers;
  - (b) recognize any association composed only of police officers. (*Added 23 of 1972 s. 2. Amended 69 of 1977 s. 2*)
- (4) The Commissioner may seek the advice of any such association on any matter relating to the welfare and conditions of service of all or any police officers. (*Added 23 of 1972 s. 2*)
- (5) An association established or recognized under subsection (3) shall not be a trade union for the purposes of this section or of any other law. (*Added 23 of 1972 s. 2*)

*(Added 29 of 1950 s. 3)*

## **9. Liability for service**

All police officers shall be bound to serve at any place in Hong Kong or on board any vessel in the service of the Government.

*(Amended 76 of 1999 s. 3)*

## **10. Duties of police force**

The duties of the police force shall be to take lawful measures for—

- (a) preserving the public peace;
- (b) preventing and detecting crimes and offences;
- (c) preventing injury to life and property;
- (d) apprehending all persons whom it is lawful to apprehend and for whose apprehension sufficient grounds exists;

- (e) regulating processions and assemblies in public places or places of public resort;
- (f) controlling traffic upon public thoroughfares and removing obstructions therefrom;
- (g) preserving order in public places and places of public resort, at public meetings and in assemblies for public amusements, for which purpose any police officer on duty shall have free admission to all such places and meetings and assemblies while open to any of the public;
- (ga) assisting coroners to discharge their duties and exercise their powers under the Coroners Ordinance (Cap. 504);  
*(Added 27 of 1997 s. 75)*
- (h) assisting in carrying out any revenue, excise, sanitary, conservancy, quarantine, immigration and alien registration laws;
- (i) assisting in preserving order in the waters of Hong Kong and in enforcing port and maritime regulation therein;  
*(Amended 76 of 1999 s. 3)*
- (j) executing summonses, subpoenas, warrants, commitments and other process issued by the courts;
- (k) exhibiting informations and conducting prosecutions;
- (l) protecting unclaimed and lost property and finding the owners thereof;
- (m) taking charge of and impounding stray animals;
- (n) assisting in the protection of life and property at fires;
- (o) protecting public property from loss or injury;

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- (p) attending the criminal courts and, if specially ordered, the civil courts and keeping order therein;
  - (q) escorting and guarding prisoners;
  - (r) executing such other duties as may by law be imposed on a police officer.
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## **Part II**

### **Constitution of Police Force**

#### **11. Constitution of police force**

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.

*(Amended 76 of 1999 s. 3)*

#### **12. Payment of police force**

Provisions for the payment and maintenance of the police force under this Ordinance shall be by charges on the general revenue of Hong Kong, to such amounts and in such proportion as may from time to time by annual vote or otherwise be voted by the Legislative Council.

*(Amended 76 of 1999 s. 3)*

#### **13. Appointment, etc. of gazetted police officers**

- (1) A gazetted police officer shall be appointed, interdicted, suspended or dismissed according to the terms of the Public Service (Administration) Order and government regulations for the time being in force but subject nevertheless to any special conditions of his appointment. *(Amended 53 of 1960 s. 3; 76 of 1999 s. 3)*
- (2) Notwithstanding subsection (1), a gazetted police officer may not resign from the police force except by—
  - (a) giving to the Commissioner 3 months' notice in writing of his intention to resign; or

- (b) with the prior consent of the Commissioner, paying into the Treasury 1 month's salary in lieu of notice. *(Added 17 of 1975 s. 2)*

**14. Appointment and promotion of inspectors, non-commissioned officers and constables**

- (1) An inspector may be appointed and promoted by the Commissioner.
- (2) *(Repealed 12 of 1982 s. 2)*
- (3) A non-commissioned officer or constable may be appointed, advanced in salary or promoted by the Commissioner. *(Amended 42 of 1977 s. 4)*
- (4) A non-commissioned officer may be reverted in rank by the Commissioner.

*(Replaced 29 of 1950 s. 4)*

**15. Dismissal**

Subject to section 13(1) a police officer may be dismissed under the provisions of this Ordinance or by virtue of the rights reserved by section 38.

*(Replaced 42 of 1977 s. 5)*

**16. Termination of service in the public interest**

The service of any police officer may be terminated in accordance with the Public Service (Administration) Order on the ground that, having regard to the conditions of the public service, the usefulness of the police officer thereto and all other circumstances of the case, such termination is desirable in the public interest.

*(Added 53 of 1960 s. 5. Amended 76 of 1999 s. 3)*

**17. Interdiction**

- (1) If the Commissioner considers that the public interest requires that a police officer other than a gazetted police officer should cease to exercise the powers and functions of his office forthwith, he may interdict the police officer from the exercise of such powers and functions where— (*Amended 12 of 1982 s. 3*)
- (a) disciplinary or criminal proceedings are being instituted or are about to be instituted against such officer; or
  - (b) such officer is the subject of an inquiry into his conduct in connexion with his duties as a police officer or the subject of an investigation into any report, allegation or suspicion that he has committed an offence.
- (2) A police officer who has been interdicted under—
- (a) subsection (1)(a), shall be allowed to receive such proportion of his pay, not being less than one-half, as the Commissioner shall in every case direct, until such time as he may be convicted of an offence whereupon the matter shall be determined under section 37(4);
  - (b) subsection (1)(b), shall not on that account receive less than his full pay.
- (3) If the proceedings, inquiry or investigation do not result in the dismissal or other punishment of such officer, he shall be entitled to the full amount of the pay which he would have received if he had not been interdicted.
- (4) If the proceedings, inquiry or investigation result in punishment other than the dismissal of such officer, he may be paid such proportion of the pay withheld as a result of his interdiction as the Commissioner may direct.

*(Replaced 42 of 1977 s. 6)*

## 18. Warrant card

A warrant card shall be issued to every police officer, and shall be evidence of his appointment under this Ordinance.

**19. Exemption in respect of civil process**

- (1) Subject to the provisions of subsection (2)—
- (a) the pay and allowances of a non-commissioned officer or constable shall not be assignable or transferable;  
*(Amended 74 of 1980 s. 10)*
  - (b) *(Repealed 74 of 1980 s. 10)*
- (2) The provisions of subsection (1) shall not apply to—
- (a) a debt due to the Government; *(Amended 76 of 1999 s. 3)*
  - (b) a fine imposed by law;
  - (c) an order for the payment of alimony or maintenance made by any court;
  - (d) an assignment made under the Public Officers (Assignment of Emoluments) Ordinance (Cap. 363).  
*(Added 74 of 1980 s. 10)*
- (3) The pay and allowances of a non-commissioned officer or constable shall not pass to the official receiver or a trustee on the bankruptcy of such non-commissioned officer or constable nor shall they form part of his estate for the purpose of bankruptcy. *(Amended L.N. 375 of 1991)*

**20.** *(Repealed 2 of 2003 s. 68)*

**21. Police officer to be deemed on duty**

Every police officer shall for the purposes of this Ordinance be deemed to be always on duty when required to act as such and shall perform the duties and exercise the powers granted to him under this Ordinance or any other law at any and every place in Hong Kong where he may be doing duty.

*(Amended 76 of 1999 s. 3)*

**22. Clothing**

Every police officer shall be provided with such articles of uniform and equipment as may be necessary for the effectual discharge of his duties. Such articles shall be kept and used according to police orders.

**23. Discharge and resignation of non-commissioned officer and constable**

- (1) Without prejudice to the provisions of section 38, a non-commissioned officer or constable who has not completed 10 years of service may be discharged from the police force by the Commissioner by 1 month's notice in writing or paying him 1 month's salary in lieu of notice. *(Amended 13 of 1953 s. 4)*
- (2) A non-commissioned officer or constable may resign from the police force by giving to 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 of his intention to resign from the police force: *(Amended 13 of 1953 s. 4)*

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. 4)*

*(Replaced 29 of 1950 s. 7)*

**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; L.N. 362 of 1997; 58 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)*

## **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 months' 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*)

## **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*)

## **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, 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.

**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.

**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)*

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## 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.

#### 31. Summary dismissal\*

- (1) Notwithstanding any provision of this Ordinance and any other law, provision of Public Service (Administration) Order or 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)*

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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.

**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)*

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

**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.

**35-36.** *(Repealed 42 of 1977 s. 9)*

**37. Conviction of police officer\***

- (1) Nothing in this Ordinance shall be construed to exempt any police officer from being proceeded against by the ordinary

course of law when accused of any offence punishable under any other Ordinance or law.

- (2) No police officer who has been acquitted by a court of any crime or offence shall be tried departmentally on the same charge.
- (3) A sentence passed upon a police officer subject to this Ordinance shall be in no respect affected by such officer ceasing to be subject to this Ordinance by discharge or otherwise.
- (4) No pay or allowance shall be payable to any police officer with effect from the date of the finding by a court in criminal proceedings that a charge against such officer in respect of a criminal offence has been proved against him unless the approval of the Commissioner of such payment be given. *(Amended 12 of 1982 s. 8; 6 of 2009 s. 29)*
- (5) A police officer in respect of whom a court has found in criminal proceedings that a charge against him in respect of a criminal offence has been proved and whose appeal or other application for review of those proceedings is not allowed or is abandoned or withdrawn, may be dismissed without retirement benefits, compulsorily retired with full retirement benefits or reduced retirement benefits or without retirement benefits, reduced or reverted in rank or subjected to a lesser punishment— *(Amended 12 of 1982 s. 8; 61 of 1988 s. 9; 6 of 2009 s. 7)*
  - (a) by the Chief Executive in the case of an inspector who has been confirmed in his appointment, subject to any conditions of his appointment; and *(Amended 76 of 1999 s. 3)*
  - (b) by the Commissioner in the case of—
    - (i) an inspector who has not been confirmed in his appointment; or

(ii) a non-commissioned officer; or

(iii) a police constable:

Provided that an inspector shall not be reduced or reverted to a rank lower than inspector.

(6) Any station sergeant or sergeant dismissed under subsection (5) shall be reduced to the rank of constable before dismissal.

(7) Where a police officer is dismissed under subsection (5) any arrears of pay due to him may be forfeited by order of— (*Amended L.N. 587 of 1995*)

(a) the Chief Executive in the case of an inspector who has been confirmed in his appointment subject to any conditions of his appointment; and (*Amended 76 of 1999 s. 3*)

(b) by the Commissioner in the case of—

(i) an inspector who has not been confirmed in his appointment; or

(ii) a non-commissioned officer; or

(iii) a police constable.

(8) In subsections (4) and (5) ***criminal proceedings*** (刑事法律程序) and ***criminal offence*** (刑事罪行) include, respectively—

(a) criminal proceedings in; and

(b) a criminal offence against the law of,

any place outside Hong Kong. (*Added 12 of 1982 s. 8*)

(*Replaced 42 of 1977 s. 10*)

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Editorial Note:

\* This section was amended by sections 7 and 29 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.

**38. Saving of the rights of the Central People's Government and the Government of the Hong Kong Special Administrative Region**

Nothing in this Ordinance contained shall be construed to limit the right of the Central People's Government to dismiss or terminate the appointment of the Commissioner of Police, or of the Government of the Hong Kong Special Administrative Region to dismiss or terminate the appointment of any other police officer, and without compensation.

*(Amended 76 of 1999 s. 3)*

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## Part IV

### Police Welfare Fund

*(Part IV replaced 58 of 1999 s. 3)*

#### 39. Definitions: Part IV

(1) In this Part—

**acquire** (取得) means acquire by purchase or by any other lawful means;

**amenities** (設施活動) means any of the following—

- (a) facilities that are not chargeable to the general revenue, including holiday premises and recreational facilities (whether provided free or for a charge);
- (b) social, educational and recreational activities and performances (whether provided free or for a charge and whether provided for participation or as spectator events);

**beneficiaries** (受益人) means the following persons—

- (a) police officers;
- (b) auxiliary officers who are incapacitated because of injuries sustained while on duty;
- (c) civilian officers;
- (d) former police officers;
- (e) former auxiliary officers;
- (f) former civilian officers;
- (g) dependants of persons specified in subsection (2);

**civilian officer** (文職人員) means a public officer who holds a civilian police departmental grade office in the police force;

***civilian police departmental grade office*** (警察部門職系中的文職職位) means any of the following positions—

- (a) force armourer;
- (b) force welfare officer;
- (c) interviewer;
- (d) police communications assistant;
- (e) police communications computer operator;
- (f) police communications officer;
- (g) police translator;
- (h) police telecommunications inspector;
- (i) any other position prescribed by the police regulations for the purposes of this definition;

***corporation*** (法團) means the corporation sole constituted under section 39A(1);

***dependant*** (受養人) means—

- (a) in relation to a police officer or a civilian officer—a person who, in the opinion of the Commissioner, is wholly or partially dependent on the officer; and
- (b) in relation to a deceased person who, at the time of death, was a police officer, a former police officer, an auxiliary officer who died from injuries sustained while on duty, a former auxiliary officer whose death was attributable to injuries sustained while on duty, a civilian officer or a former civilian officer—a person who, in the opinion of the Commissioner, was wholly or partially dependent on the deceased person at the time of the death;

***dispose of*** (處置) means dispose of by sale, lease, hiring, mortgage or any other lawful means;

***former auxiliary officer*** (前輔警人員) means a person who has been discharged from the auxiliary force because of an injury sustained while on duty;

***former civilian officer*** (前文職人員) means a person who, while serving with the police force as a public officer, held a civilian police departmental grade office and—

- (a) who has retired from the police force with retirement benefits; or (*Amended 6 of 2009 s. 22*)
- (b) whose contract of service with the police force has expired on or after the person reached 55 years of age without the contract being renewed;

***former police officer*** (前警務人員) means a person—

- (a) who has retired from service as a police officer with retirement benefits; or (*Amended 6 of 2009 s. 22*)
- (b) whose contract of service as a police officer has expired on or after the person reached 55 years of age without the contract being renewed;

***function*** (職能) includes a power, an authority and a duty;

***Police Staff Purchase Scheme*** (警察職員購物計劃) means the scheme (if any) established under section 39F;

***this Part*** (本部) includes police regulations made under section 45(1)(g).

- (2) The following persons are specified for the purposes of paragraph (g) of the definition of ***beneficiaries*** in subsection (1)—
  - (a) deceased police officers;
  - (b) deceased former police officers;
  - (c) auxiliary officers who died from injuries sustained while on duty;

- (d) deceased civilian officers who occupied civilian police departmental grade offices at the time of death;
- (e) deceased former civilian officers.

**39A. Commissioner to be corporation sole for purposes of this Part**

- (1) The Commissioner of Police of Hong Kong is constituted as a corporation sole for the purposes of this Part with the corporate name of “Commissioner of Police Incorporated”.
- (2) The corporation—
  - (a) has perpetual succession; and
  - (b) for the purposes of this Part, may acquire, hold and dispose of real and personal property; and
  - (c) may take legal proceedings and be proceeded against in its corporate name; and
  - (d) is required to have a corporate seal; and
  - (e) for the purposes of this Part, has the capacity to do and be subjected to all other things that bodies corporate may, by law, do and be subjected to.
- (3) A document requiring authentication by the corporation is sufficiently authenticated if it is signed by the Commissioner or by any police officer authorized to do so by the Commissioner.
- (4) The affixing of the corporate seal to a document executed by the corporation is not valid unless authenticated by the Commissioner or a police officer designated for the purpose by the Commissioner.
- (5) The corporation is not a trustee for the beneficiaries, but, subject to subsection (6), nothing in this Part limits a right conferred by law to bring legal proceedings against the corporation for a contravention of this Part or a failure to perform a duty imposed by this Part.

- (6) Neither the Commissioner nor any delegate of the corporation is personally liable in any legal proceedings arising out of an act done or omitted to be done in relation to the Police Welfare Fund if the act was done or omitted to be done in good faith for the purpose of giving effect to this Part.

**39B. Continuance of Police Welfare Fund**

- (1) The fund called the “Police Welfare Fund” in English and “警察福利基金” in Chinese is continued by this section.
- (2) The Police Welfare Fund and the property derived from the application of that Fund are vested in the corporation.

**39C. What the Police Welfare Fund consists of**

The Police Welfare Fund consists of the following—

- (a) all fees paid for the services of police officers detailed by the Commissioner to perform special services under section 66 or for services performed by auxiliary officers employed under section 18 of the Hong Kong Auxiliary Police Force Ordinance (Cap. 233); (*Amended 14 of 2002 s. 3*)
- (b) any donations made to that Fund;
- (c) if a Police Staff Purchase Scheme is established under section 39F, proceeds derived from transactions under the Scheme;
- (d) proceeds from the sale of souvenirs and the disposal of other property held for the purposes of that Fund;
- (e) all money received from the letting of holiday premises, or the hire of recreational facilities, held for the purposes of that Fund;

- (f) all fees collected from social, educational and recreational activities organized by or on behalf of the Commissioner for the purposes of that Fund;
- (g) money derived from the investment of that Fund;
- (h) money accruing as interest on loans made from that Fund;
- (i) gifts of money required under the notice from time to time given by the Chief Executive for the purposes of section 3 of the Prevention of Bribery Ordinance (Cap. 201) to be disposed of by being paid into that Fund; (*Amended 10 of 2005 s. 215; 26 of 2012 s. 45*)
- (j) any money voted to that Fund by the Legislative Council;
- (k) money held in that Fund immediately before the commencement of Schedule 2 to the Disciplined Services Welfare Funds Legislation (Amendment) Ordinance 1999 (58 of 1999) and money which was, immediately before that commencement, recoverable for that Fund and which is subsequently paid to, or recovered for, that Fund after that commencement;
- (l) money paid or payable to the credit of that Fund from any other lawful source.

### **39D. Functions of corporation**

- (1) Subject to this Part, the principal function of the corporation is to administer the Police Welfare Fund, and the property derived from the application of that Fund, for the benefit of beneficiaries and others as provided by this Part.
- (2) The corporation has such ancillary functions as are necessary to enable it to perform its principal function.
- (3) The corporation is required—

- (a) to act honestly in all matters relating to its principal function; and
- (b) to exercise in relation to all matters relating to the administration of the Police Welfare Fund the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with property of another person for whom the person felt morally bound to provide; and
- (c) to ensure that its functions relating to that Fund are performed or exercised in the best interests of beneficiaries.

**39E. What the Police Welfare Fund may be used for**

- (1) The Police Welfare Fund may be used for any of the following purposes—
  - (a) providing and maintaining amenities for the use and enjoyment of the beneficiaries;
  - (b) acquiring real and personal property for the purpose specified in paragraph (a);
  - (c) making payments to the corporation's employees in respect of their employment;
  - (d) making payments for the services of the corporation's agents;
  - (e) compensating police officers, auxiliary officers and civilian officers for extra services provided by them;
  - (f) making loans to beneficiaries;
  - (g) granting financial assistance to dependants of deceased police officers, deceased former police officers, auxiliary officers who died from injuries sustained while on duty, former auxiliary officers whose deaths were attributable to injuries sustained while on duty, deceased civilian

- officers and deceased former civilian officers in order to meet the funeral expenses of those deceased persons;
- (h) making grants, allowances and gifts to beneficiaries for purposes other than the purpose mentioned in paragraph (g);
  - (i) making or acquiring souvenirs for sale to beneficiaries and others;
  - (j) if a Police Staff Purchase Scheme is established under section 39F, undertaking transactions for the purpose of giving effect to the Scheme;
  - (k) making donations to charitable or community organizations;
  - (l) paying interest that is payable on loans made to the corporation or that Fund.
- (2) The corporation—
- (a) may dispose of property derived from the application of the Police Welfare Fund that is, in its opinion, no longer required for the purposes of that Fund; and
  - (b) may pay from that Fund the expenses incurred in disposing of the property.
- (3) Loans to beneficiaries may, at the discretion of the corporation, be granted free of interest or subject to the payment of interest.
- (4) Whenever the Commissioner considers it appropriate to do so, the Commissioner may permit persons who are not beneficiaries to enjoy the use of amenities derived from the application of the Police Welfare Fund. Permission may be granted subject to such conditions as the Commissioner considers appropriate.

### **39F. Corporation may establish Police Staff Purchase Scheme**

- (1) The corporation may establish and maintain a scheme, to be known as the Police Staff Purchase Scheme, under which—
  - (a) the Police Welfare Fund may be used to acquire goods or services for resupply to beneficiaries, or to finance arrangements for the supply of goods or services to beneficiaries; and
  - (b) payment by beneficiaries for the goods or services may be made either in a single cash sum or by instalments.
- (2) If a Police Staff Purchase Scheme is established, the corporation must ensure that the proceeds derived from transactions under the Scheme are credited to the Police Welfare Fund.
- (3) For the purposes of this section, *supply* (供應) and *resupply* (重新供應) mean supply and resupply for sale.

### **39G. Corporation may make donations**

The corporation may, whenever appropriate, donate money from the Police Welfare Fund to charitable or community organizations on such terms and conditions as it thinks fit.

### **39H. Corporation may employ staff**

- (1) The corporation may, for the purposes of this Part—
  - (a) employ persons under contracts of employment; or
  - (b) use the services of any staff or facilities of the police force.
- (2) The corporation may fix the remuneration and other conditions of employment of its staff.

### **39I. Corporation may engage agents**

The corporation may engage and pay agents to transact any business or do any act (including receiving or paying money) that

the corporation is authorized or required to do for the purposes of this Part.

**39J. Corporation may delegate its functions**

- (1) The corporation may delegate to a police officer or civilian officer any of its functions, other than this power of delegation.
- (2) A delegation under this section may—
  - (a) be general or limited; and
  - (b) be revoked, wholly or partly, by the corporation.
- (3) A delegated function is to be performed or exercised only in accordance with any conditions to which the delegation is subject.
- (4) A delegate may, in the performance or exercise of a function delegated under this section, exercise any other function that is incidental to the delegated function.
- (5) A delegated function that is duly performed or exercised by a delegate is taken to have been performed or exercise by the corporation.
- (6) If a function is delegated to the holder of a particular office in the police force—
  - (a) the delegation does not cease to have effect merely because the person who was the holder of the office when the function was delegated ceases to be the holder of that office; and
  - (b) the function may be exercised, or, in the case of a duty, must be performed, by the person for the time being occupying or acting in the office.
- (7) A function that has been delegated may be performed or exercised by the corporation despite the delegation.

**39K. Corporation may enter into contracts and other transactions**

- (1) The corporation may enter into contracts and other transactions for the purposes of the Police Welfare Fund.
  - (2) A person who pays money under a contract or other transaction purporting to be entered into under this section has no obligation to see that the money is paid into the Police Welfare Fund.
  - (3) A person who enters into a contract or other transaction with a police or civilian officer who purports to be a delegate of the corporation has no obligation to be satisfied that the corporation has delegated to the officer the power to enter into the contract or other transaction.
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## **Part V**

### **Unclaimed Property and Intestate Estates**

#### **40. Disposal of property deposited at police stations**

- (1) Particulars of any property which comes into the custody or possession of the police other than in connexion with any criminal charge or under section 42 shall be forwarded to the Commissioner.
- (2) If any person shall establish his title to such property to the satisfaction of the Commissioner within 3 months after the property comes into the custody or possession of the police, the same shall be delivered to him on payment of all expenses reasonably incurred and of such sum, not exceeding one-fifth of the value of the property, as may be awarded by the Commissioner by way of reward to the finder (if any) of the property.
- (3) If the title to any such property is not so established within the said period of 3 months, the property may be returned to the finder (if any) not being a member of the police force on payment by him of such expenses.
- (4) If any finder or person establishing title as aforesaid fails or refuses immediately to pay the said expenses or sum awarded, the property may be sold and the proceeds of sale after deduction of all expenses reasonably incurred shall be paid to such finder or person establishing title; in the case of payment to a person establishing title there shall also be deducted such sum as may be awarded by the Commissioner as a reward to the finder (if any) of the property.
- (5) If title to the property is not established and either the finder cannot be traced or the property came into the custody or

possession of the police otherwise than through a finder, the property may be sold and after deduction of all expenses reasonably incurred the proceeds of sale shall be paid into the Treasury.

**41. Disposal of unclaimed property of persons in custody on remand**

Any property of a person held in custody on remand which comes into the custody or possession of the police in accordance with the requirements of this Ordinance or of the Prisons Ordinance (Cap. 234), or of any regulations or orders made thereunder, which remains unclaimed by any such person for a period of 1 month from the discharge of such person from custody, may be sold and after deduction of expenses reasonably incurred the proceeds of sale shall be paid into the Treasury.

**42. Power to administer certain property of deceased persons**

- (1) Whenever any person dies leaving goods and chattels in Hong Kong under \$5,000 in value, which goods and chattels are, in the absence of any person entitled thereto, taken charge of by the police for the purpose of safe custody, the Commissioner may, if he thinks fit, order the said goods and chattels to be delivered, without grant of probate or letters of administration taken out, to any person claiming to be entitled to the whole or any part thereof, if he shall be satisfied as to the title of the claimant and the value of the goods and chattels by the oath or affirmation of the claimant, or by such other evidence as he may require. (*Amended 12 of 1982 s. 10; 76 of 1999 s. 3*)
- (2) In the event of any such goods and chattels being of a perishable nature or likely to be deteriorated in value by being kept the Commissioner may order the sale thereof and the proceeds of such sale shall be dealt with in the manner specified in subsection (1).

(3) The Commissioner may, at his discretion, before making any order under subsections (1) and (2), take such security as he may think proper for the due administration and distribution of such goods and chattels. Nothing in this section contained shall affect the right of any person to recover the whole or any part of the same from the person to whom it may have been delivered pursuant to such order.

(4) Any goods and chattels taken charge of under this section and not claimed within the period of 1 month, may be sold and the proceeds of sale shall be paid into the Treasury:

Provided always that if at any time thereafter the owner of such goods and chattels shall appear and claim the same, restitution shall be made, on the claim being established to the satisfaction of the Chief Executive, out of the Treasury.

*(Amended 76 of 1999 s. 3)*

#### **43. Disposal of valueless unclaimed goods or chattels**

If goods and chattels of the nature specified in sections 40, 41 and 42 are of no appreciable value or of value so small in the opinion of the Commissioner as to render impracticable the sale of such property, the Commissioner may order such property to be destroyed or otherwise disposed of as he thinks fit.

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## Part VI

### Procedure

#### 44. Powers of magistrates to be exercised by certain police officers

In all matters in which by this Ordinance or by police regulations made thereunder jurisdiction is given to certain police officers to inflict punishments, the powers of a magistrate may be exercised by such officers in so far as is necessary to enable them to exercise such jurisdiction.

#### 45. Police regulations

- (1) The Chief Executive in Council may make such regulations to be called “police regulations” (警察規例) as he may think expedient not inconsistent with the provisions of this Ordinance. Such regulations in addition to the powers hereinbefore conferred may prescribe or provide for— (*Amended 76 of 1999 s. 3*)
  - (a) conditions of service excluding salaries, pensions and gratuities; (*Added 29 of 1950 s. 14*)
  - (b) organization and distribution;
  - (c) appointments, the award of allowances, resignations, discharges, dismissals, reductions and reversions; (*Amended 29 of 1950 s. 14*)
  - (d) discipline and punishments and for compensation to be paid to the Government by an officer for loss or damage of any property entrusted or supplied to him in his capacity as an officer, or of any Government property, and for reimbursement of the Government of any compensation or money reasonably paid by the Government, whether ex-gratia or otherwise, in

- respect of loss or damage of any property for the care or custody of which the officer is responsible, or where such loss or damage results from the neglect or fault of the officer; (*Amended 42 of 1977 s. 12*)
- (e) leave of absence and fares and passages on such leave;
  - (f) description of uniforms, arms and accoutrements to be provided;
  - (g) the control, administration and investment of the Police Welfare Fund; (*Replaced 58 of 1999 s. 3*)
  - (h) such other matters as may be necessary and expedient for preventing abuse or neglect of duty, and for rendering the police force efficient in the discharge of its duties, and for carrying out the objects of this Ordinance.
- (2) The power to make regulations providing for discipline and punishments shall include and be deemed always to have included power to make regulations providing for appropriate tribunals to inquire into disciplinary offences by police officers other than gazetted police officers, for suspension of punishment awarded, for the review of an appeal from the findings and awards of such tribunals, for appeals against the award of the Commissioner, for limiting the powers of punishment exercisable by any appropriate tribunal, for the seizure and detention of any property reasonably suspected to be the property of a police officer which is required or likely to be required for the purposes of investigating a disciplinary offence and for the subsequent disposal, whether by sale or otherwise, of any property so seized and detained, for the forfeiture of any property admitted as an exhibit in any disciplinary proceedings and for the subsequent disposal, whether by sale or otherwise, of any property so admitted and generally for the procedure to be followed in cases where a police officer other than a gazetted police officer is alleged to

have committed any of the disciplinary offences specified in the regulations. (*Added 29 of 1950 s. 14. Amended 42 of 1977 s. 12; 12 of 1982 s. 11*)

- (3) Whenever the Chief Executive in Council is satisfied that it is equitable that any regulation made under this section should have retrospective effect in order to confer a benefit upon or remove a disability attaching to any person that regulation may be given retrospective effect for that purpose: (*Amended 76 of 1999 s. 3*)

Provided that no such regulation shall have retrospective effect unless it has received the prior approval of the Legislative Council signified by resolution.

- (4) Every regulation made under this section shall be published in the Gazette.

#### **46. Police general orders**

- (1) Subject to subsection (2), the Commissioner may from time to time make such orders as he thinks expedient to enable him to administer the police force, render the police force efficient in the discharge of its duties and for carrying out the objects and provisions of this Ordinance, and in addition, such orders may provide for any of the matters specified in section 45.
- (2) Any orders made under this section shall be called “police general orders” (警察通例) and shall not be inconsistent with this Ordinance or any regulations under section 45.

*(Replaced 42 of 1977 s. 13)*

#### **47. Headquarter orders**

The Commissioner may issue orders of a routine nature to be called “headquarter orders” (總部通令) for the control, direction and information of the police force provided that such orders are

not inconsistent with the provisions of this Ordinance or police regulations or police general orders.

**48.**     *(Repealed 42 of 1977 s. 14)*

**49.     Delegation of certain powers by Commissioner**

The Commissioner may delegate any of his powers under section 40, 41, 42 or 43 to any member of the police force by office or any public officer attached to the police force and such delegations will be published in police general orders.

*(Amended 42 of 1977 s. 15)*

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## **Part VII**

### **Miscellaneous Provisions**

#### **50. Arrest, detention and bail of suspected persons and seizure of suspected property**

- (1) It shall be lawful for any police officer to apprehend any person who he reasonably believes will be charged with or whom he reasonably suspects of being guilty of—
- (a) any offence for which the sentence is fixed by law or for which a person may (on a first conviction for that offence) be sentenced to imprisonment; or
  - (b) any offence, if it appears to the police officer that service of a summons is impracticable because—
    - (i) the name of the person is unknown to, and cannot readily be ascertained by, the police officer;
    - (ii) the police officer has reasonable grounds for doubting whether a name given by the person as his name is his real name;
    - (iii) the person has failed to give a satisfactory address for service; or
    - (iv) the police officer has reasonable grounds for doubting whether an address given by the person is a satisfactory address for service. (*Replaced 57 of 1992 s. 2*)
- (1A) A police officer may exercise the power to apprehend a person under subsection (1) without any warrant for that purpose and whether or not he has seen any offence committed. (*Added 57 of 1992 s. 2*)

- (1B) It shall be lawful for any police officer to apprehend any person whom he reasonably suspects of being liable to deportation from Hong Kong. (*Added 57 of 1992 s. 2*)
- (2) If any person who may lawfully be apprehended under subsection (1) or (1B) forcibly resists the endeavour to arrest him or attempts to evade the arrest, a police officer or other person may use all means necessary to effect the arrest. (*Replaced 57 of 1992 s. 2*)
- (3) If any police officer has reason to believe that any person to be arrested has entered into or is in any place the person residing in or in charge of such place shall on demand of that police officer allow him free ingress thereto and afford all reasonable facilities for search therein. (*Replaced 57 of 1992 s. 2*)
- (4) If ingress to such place cannot be obtained under subsection (3) it shall be lawful in any case for a person acting under a warrant and in any case in which a warrant may issue but cannot be obtained without affording the person to be arrested an opportunity of escape from a police officer, to enter such place and search therein and in order to effect an entrance into such place to break open any outer or inner door or window of any place whether that of the person to be arrested or of any other person if, after notification of his authority and purpose and demand of admittance duly made, he cannot otherwise obtain admittance.
- (5) Any police officer or other person authorized to make an arrest may break open any place in order to liberate himself or any other person who having lawfully entered for the purpose of making an arrest is detained therein.
- (6) Where any person is apprehended by a police officer it shall be lawful for such officer to search for and take possession of any newspaper, book or other document or any portion or extract therefrom and any other article or chattel which

may be found on his person or in or about the place at which he has been apprehended and which the said officer may reasonably suspect to be of value (whether by itself or together with anything else) to the investigation of any offence that the person has committed or is reasonably suspected of having committed:

Provided that nothing in this subsection shall be construed in diminution of the powers of search conferred by any particular warrant. (*Replaced 57 of 1992 s. 2*)

- (7) Whenever it appears to a magistrate upon the oath of any person that there is reasonable cause to suspect that there is in any building, vessel (not being a ship of war or a ship having the status of a ship of war) or place any newspaper, book or other document, or any portion or extract therefrom, or any other article or chattel which is likely to be of value (whether by itself or together with anything else) to the investigation of any offence that has been committed, or that is reasonably suspected to have been committed or to be about to be committed or to be intended to be committed, such magistrate may by warrant directed to any police officer empower him with such assistants as may be necessary by day or by night—
- (a) to enter and if necessary to break into or forcibly enter such building, vessel or place and to search for and take possession of any such newspaper, book or other document or portion of or extract therefrom or any such other article or chattel which may be found therein; and
  - (b) to detain, during such period as is reasonably required to permit such a search to be carried out, any person who may appear to have such newspaper, book or other document or portion thereof or extract therefrom or other article or chattel in his possession or under his

control and who, if not so detained, might prejudice the purpose of the search. *(Replaced 57 of 1992 s. 2)*

**51. Person arrested to be delivered to custody of police officer in charge of police station**

Every person taken into custody by a police officer with or without a warrant, except a person detained for the mere purpose of taking his name and residence or detained under section 54, shall be forthwith delivered into the custody of the officer in charge of a police station or a police officer authorized in that behalf by the Commissioner.

*(Replaced 57 of 1992 s. 3)*

**52. Person arrested to be discharged on recognizance or brought before a magistrate**

- (1) Whenever any person apprehended with or without a warrant is brought to the officer in charge of any police station or a police officer authorized in that behalf by the Commissioner, it shall be lawful for such officer to inquire into the case and unless the offence appears to such officer to be of a serious nature or unless such officer reasonably considers that the person ought to be detained, to discharge the person upon his entering into a recognizance, with or without sureties, for a reasonable amount, to appear before a magistrate or to surrender for service of a warrant of arrest and detention or for discharge at the time and place named in the recognizance; but where such person is detained in custody he shall be brought before a magistrate as soon as practicable, unless within 48 hours of his apprehension a warrant for his arrest and detention under any law relating to deportation is applied for, in which case he may be detained for a period not exceeding 72 hours from the time of such apprehension. Every recognizance so taken shall be of equal obligation on

the parties entering into the same and shall be liable to the same proceedings for the estreating thereof as if the same had been taken before a magistrate. (*Amended 57 of 1992 s. 4*)

- (2) The respective names, residences and occupations of the person so apprehended and of his surety or sureties, if any, entering into such recognizance, together with the condition thereof and the sums respectively acknowledged, shall be entered in a book to be kept for that purpose which shall be laid before the magistrate before whom the person apprehended is to appear or in the case of a person bound by recognizance to surrender for service of a warrant of arrest and detention or for discharge, before any magistrate; and if such person does not appear or has not appeared when called upon at the time and place mentioned in the recognizance, the magistrate shall forthwith estreat the recognizance:

Provided that if the person apprehended appears and makes application for a postponement of the hearing of the charge against him, the magistrate may enlarge the recognizance to such further time as he may think proper, and when the matter has been heard and determined such recognizance shall be discharged without fee or reward.

- (3) If, upon a person being taken into custody as aforesaid, it appears to the officer in charge of the police station or a police officer authorized in that behalf by the Commissioner that the inquiry into the case cannot be completed forthwith, he may discharge the said person on his entering into a recognizance, with or without sureties, for a reasonable amount to appear at such police station and at such time as is named in the recognizance, unless he previously receives a notice in writing from the officer in charge of the police station or a police officer authorized in that behalf by the Commissioner that his attendance is not required; and any such recognizance may be enforced as if it were a

recognizance for the appearance of the said person before a magistrate.

- (3A) (a) Any such police officer may also discharge any such person if such person or a surety, or both such person and a surety, deposit with the officer such sum of money as the officer may specify having regard to all the circumstances, including the seriousness of the alleged offence, the circumstances of such person and the day on or the time at which such sum is to be deposited.
- (b) If a person so discharged does not appear before a magistrate, or at such other place as the officer may have specified, at such time as the officer may have specified, a magistrate may order any sum deposited under paragraph (a) to be forfeited. (*Added 37 of 1976 s. 2*)
- (4) Whenever any person apprehended with or without warrant is a member of Her Majesty's forces it shall be lawful for the officer in charge of a police station if he deems fit to hand over such person to the custody of the appropriate authority of Her Majesty's forces for detention by such authority; but where such person is so detained in custody he shall be produced before the officer in charge of a police station when required and, if charged, before a magistrate as soon as practicable and in any case not later than 48 hours from the time of apprehension.

### **53. Power of arrest**

Any warrant lawfully issued for any purpose may be executed by any police officer at any time notwithstanding that the warrant is not in his possession at the time, but the warrant shall, on the demand of the person affected, be shown to him as soon as practicable after its execution.

**54. Power to stop, detain and search**

- (1) If a police officer finds any person in any street or other public place, or on board any vessel, or in any conveyance, at any hour of the day or night, who acts in a suspicious manner, it shall be lawful for the police officer—
  - (a) to stop the person for the purpose of demanding that he produce proof of his identity for inspection by the police officer;
  - (b) to detain the person for a reasonable period while the police officer enquires whether or not the person is suspected of having committed any offence at any time; and
  - (c) if the police officer considers it necessary to do so—
    - (i) to search the person for anything that may present a danger to the police officer; and
    - (ii) to detain the person during such period as is reasonably required for the purpose of such a search.
- (2) If a police officer finds any person in any street or other public place, or on board any vessel, or in any conveyance, at any hour of the day or night, whom he reasonably suspects of having committed or of being about to commit or of intending to commit any offence, it shall be lawful for the police officer—
  - (a) to stop the person for the purpose of demanding that he produce proof of his identity for inspection by the police officer;
  - (b) to detain the person for a reasonable period while the police officer enquires whether or not the person is suspected of having committed any offence at any time;

- (c) to search the person for anything that is likely to be of value (whether by itself or together with anything else) to the investigation of any offence that the person has committed, or is reasonably suspected of having committed or of being about to commit or of intending to commit; and
  - (d) to detain the person during such period as is reasonably required for the purpose of such a search.
- (3) In this section, ***proof of identity*** (身分證明文件) has the same meaning as in section 17B of the Immigration Ordinance (Cap. 115).

*(Replaced 57 of 1992 s. 5)*

**55. Power to stop, search and detain vessels, etc., or person suspected of conveying stolen property**

It shall be lawful for any police officer to stop, search and detain any vessel, boat, vehicle, horse or other animal or thing in or upon which there is reason to suspect that anything stolen or unlawfully obtained may be found and also any person who may be reasonably suspected of having or conveying in any manner anything stolen or unlawfully obtained; and any person to whom any property is offered to be sold or delivered, if he has reasonable cause to suspect that any such offence has been committed with respect to such property, or that the same or any part thereof has been stolen or otherwise unlawfully obtained, is hereby authorized and if it is in his power, is required to apprehend and detain such offender and as soon as may be to deliver him into the custody of a police officer together with such property to be dealt with according to law.

**56. *(Repealed 57 of 1992 s. 6)***

**57. Detention and sale of vehicle, etc. of person apprehended**

- (1) When any person having charge of any vehicle, boat, horse or any other animal or thing is taken into the custody of a police officer under this Ordinance, it shall be lawful for any such officer to take charge of such horse, vehicle or boat or such other animal or thing and to deposit the same in some place of safe custody as a security for payment of any penalty to which the person having had charge thereof may become liable and of any expenses necessarily incurred for taking charge of and keeping the same.
- (2) It shall be lawful for the magistrate before whom the case is heard to order such vehicle, boat, horse or such other animal or thing to be sold for the purpose of satisfying such penalty and reasonable expenses, in default of payment thereof, in like manner as if the same had been subject to be distrained and had been distrained for the payment thereof.

**58. Power of arrest in case of certain offences against sanitation**

Notwithstanding any provision of any enactment relating to public health or sanitation which limits the power to institute summary proceedings in certain cases, it shall be lawful for any police officer to institute summary proceedings before a magistrate against any person contravening any such provision of any such enactment as regulates the sale of foodstuffs elsewhere than in public markets:

Provided that nothing in this section shall be deemed to authorize the arrest of any offender unless the contravention is committed in a highway or other public place.

**59. Finger-prints, photographs, etc.**

- (1) Where a person has been arrested under the powers conferred by this or any other law, any police officer may take, or cause to be taken under the supervision of a police officer—
  - (a) photographs, finger-prints, palm-prints and the weight and height measurements of that person; and

- (b) sole-prints and toe-prints of that person if the officer has reason to believe that such prints would help the investigation of any offence.
- (2) The identifying particulars of a person taken under subsection (1) may be retained by the Commissioner, except that if—
  - (a) a decision is taken not to charge the person with any offence; or
  - (b) the person is charged with an offence but discharged by a court before conviction or acquitted at his trial or on appeal,the identifying particulars, together with any negatives or copies thereof, shall as soon as reasonably practicable be destroyed or, if the person prefers, delivered to that person.
- (3) Notwithstanding subsection (2), the Commissioner may retain the identifying particulars of a person who—
  - (a) has been previously convicted of any offence; or
  - (b) is the subject of a removal order under the Immigration Ordinance (Cap. 115).
- (4) Notwithstanding subsection (2)(a), the Commissioner may retain, until the person attains the age of 18 years, or until a period of 2 years has elapsed since the person was cautioned as hereinafter referred to, whichever is the later, the identifying particulars of a person under the age of 18 years who has been arrested for an offence, who has not been charged with that offence, but who has instead, in accordance with guidelines approved by the Secretary for Justice, been cautioned by a police officer of the rank of superintendent or above as to his future conduct. (*Amended 68 of 1995 s. 4; L.N. 362 of 1997*)
- (5) Where a person is convicted of an offence, any police officer may take or cause to be taken all or any of the identifying

particulars of that person whether or not such particulars are already in the possession of the Commissioner, and the Commissioner may retain any identifying particulars so taken unless and until the conviction is set aside on appeal.

- (6) In this section, *identifying particulars* (鑑別資料) in relation to a person means photographs, finger-prints, palm-prints, sole-prints, toe-prints and the weight and height measurements of that person.

*(Replaced 20 of 1991 s. 2)*

#### **59A. Intimate samples**

- (1) In any investigation in respect of an offence committed or believed to have been committed, an intimate sample may be taken from a person for forensic analysis only if—
- (a) a police officer of or above the rank of superintendent (*authorizing officer*) authorizes it to be taken;
  - (b) the appropriate consent is given; and
  - (c) a magistrate gives approval under section 59B for it to be taken.
- (2) An authorizing officer may only give an authorization as required under subsection (1)(a) if he has reasonable grounds—
- (a) for suspecting that the person from whom the intimate sample is to be taken has committed a serious arrestable offence; and
  - (b) for believing that the sample will tend to confirm or disprove the commission of the offence by that person.
- (3) An authorizing officer must give an authorization pursuant to subsection (2) in writing.
- (4) Where an authorization has been given pursuant to subsection (2), a police officer may request the person from whom

the intimate sample is to be taken and that person's parent or guardian if he is under the age of 18 years, to give the appropriate consent to the taking of the sample and the police officer, in making the request, shall inform the person and his parent or guardian, as the case may be—

- (a) of the nature of the offence in which the person is suspected to have committed;
  - (b) that there are reasonable grounds to believe that the sample will tend to confirm or disprove the commission of the offence by that person;
  - (c) that he may or may not give his consent to the taking of the sample;
  - (d) that if he consents to the taking of the sample, he may at any time withdraw that consent before the sample is taken;
  - (e) that the sample will be analysed and the information derived from such analysis may provide evidence that might be used in criminal proceedings for such offence or any other offence;
  - (f) that he may make a request to a police officer for access to the information derived from the analysis of the sample; and
  - (g) that if the person is subsequently convicted of any serious arrestable offence, any DNA information derived from the sample may be permanently stored in the DNA database maintained under section 59G(1) and may be used for the purposes specified in subsection (2) of that section.
- (5) The person from whom an intimate sample was taken pursuant to subsection (1) is entitled to access to the information derived from the analysis of the sample.

- (6) The appropriate consent must be given in writing and signed by the person or persons giving the consent.
- (7) An intimate sample—
  - (a) of urine may only be taken from a person by a police officer of the same sex as that person;
  - (b) of a dental impression may only be taken from a person by a registered dentist;
  - (c) other than urine or dental impression, may only be taken from a person by a registered medical practitioner.

*(Added 68 of 2000 s. 7)*

**59B. Magistrate's approval for the taking of intimate samples**

Where an authorization and the appropriate consent as required under section 59A(1)(a) and (b) have been given, a police officer shall make an application to a magistrate in accordance with Schedule 3 for the magistrate's approval as required under section 59A(1)(c) and the magistrate may give his approval in accordance with that Schedule.

*(Added 68 of 2000 s. 7)*

**59C. Non-intimate samples**

- (1) In any investigation in respect of any offence committed or believed to have been committed, a non-intimate sample may be taken from a person with or without his consent for forensic analysis only if—
  - (a) that person is in police detention or is in custody on the authority of a court; and
  - (b) a police officer of or above the rank of superintendent (*authorizing officer*) authorizes it to be taken.

- (2) An authorizing officer may only give an authorization as required under subsection (1)(b) if he has reasonable grounds—
  - (a) for suspecting that the person from whom the non-intimate sample is to be taken has committed a serious arrestable offence; and
  - (b) for believing that the sample will tend to confirm or disprove the commission of the offence by that person.
- (3) An authorizing officer—
  - (a) subject to paragraph (b), must give an authorization pursuant to subsection (2) in writing;
  - (b) where it is impracticable to comply with paragraph (a), may give such authorization orally, in which case he must confirm it in writing as soon as practicable.
- (4) Where an authorization has been given pursuant to subsection (2), a police officer shall, before the taking of a non-intimate sample, inform the person from whom the sample is to be taken—
  - (a) of the nature of the offence in which the person is suspected to have committed;
  - (b) that there are reasonable grounds to believe that the sample will tend to confirm or disprove the commission of the offence by that person;
  - (c) of the giving of the authorization;
  - (d) that he may or may not consent to the taking of the sample;
  - (e) that if he does not consent to the taking of the sample, the sample will still be taken from him by using reasonable force if necessary;

- (f) that the sample will be analysed and the information derived from such analysis may provide evidence that might be used in criminal proceedings for such offence or any other offence;
  - (g) that he may make a request to a police officer for access to the information derived from the analysis of the sample; and
  - (h) that if he is subsequently convicted of any serious arrestable offence, any DNA information derived from the sample may be permanently stored in the DNA database maintained under section 59G(1) and may be used for the purposes specified in subsection (2) of that section.
- (5) The person from whom a non-intimate sample was taken pursuant to subsection (1) is entitled to access to the information derived from the analysis of the sample.
- (6) Any consent given for the taking of a non-intimate sample pursuant to this section must be given in writing and signed by the person or persons giving the consent.
- (7) A non-intimate sample may only be taken by—
- (a) a registered medical practitioner; or
  - (b) a police officer, or a public officer working in the Government Laboratory, who has received training for the purpose.
- (8) A police officer may use such force as is reasonably necessary for the purposes of taking or assisting the taking of a non-intimate sample from a person pursuant to this section.

*(Added 68 of 2000 s. 7)*

**59D. Limitations on use of samples and results of forensic analysis**

- (1) Without prejudice to subsection (4), no person shall have

access to, dispose of or use an intimate sample or a non-intimate sample taken pursuant to section 59A or 59C except for the purposes of—

- (a) forensic analysis in the course of an investigation of any offence; or
  - (b) any proceedings for any such offence.
- (2) Without prejudice to subsection (4), no person shall have access to, disclose or use the results of forensic analysis of an intimate sample or a non-intimate sample taken pursuant to section 59A or 59C except—
- (a) for the purposes of—
    - (i) forensic comparison and interpretation in the course of investigation of any offence;
    - (ii) any proceedings for such an offence; or
    - (iii) making the results available to the person to whom the results relate; or
  - (b) for the purposes of section 59G(1) and (2) where the results are of forensic DNA analysis.
- (3) Any person who contravenes subsection (1) or (2) commits an offence and is liable on conviction to a fine at level 4 and to imprisonment for 6 months.
- (4) Whether or not an intimate sample or a non-intimate sample taken pursuant to section 59A or 59C or the results of forensic analysis of the sample has been destroyed under section 59H, no person shall use the sample or results in any proceedings after—
- (a) it is decided that a person from whom the sample was taken shall not be charged with any offence;
  - (b) if the person has been charged with one or more such offences—

- (i) the charge or all the charges, as the case may be, is or are withdrawn;
  - (ii) the person is discharged by a court before conviction of the offence or all the offences, as the case may be; or
  - (iii) the person is acquitted of the offence or all the offences, as the case may be, at trial or on appeal, whichever occurs first.
- (5) Whether or not a non-intimate sample taken pursuant to section 59F or DNA information derived from the sample has been destroyed under section 59H(7), no person shall use the sample or information in any proceedings after the Commissioner receives a notice served under section 59F(6).

*(Added 68 of 2000 s. 7)*

**59E. Non-intimate samples of swabs from the mouths of convicted persons**

- (1) Where a person—
- (a) has been convicted of a serious arrestable offence on or after the commencement\* of this section; and
  - (b) either—
    - (i) has not had an intimate sample or a non-intimate sample taken from him before the conviction; or
    - (ii) has had an intimate sample or a non-intimate sample taken from him before the conviction but the sample was destroyed under section 59H(1) or (4) or section 10G(1) or (4) of the Independent Commission Against Corruption Ordinance (Cap. 204),

then a police officer of the rank of superintendent or above may authorize the taking of a non-intimate sample of a swab

from the mouth of the person for the purposes of section 59G(1) and (2).

- (2) Where an authorization has been given under subsection (1), a police officer shall, before the taking of a non-intimate sample of a swab from the mouth, inform the person from whom the sample is to be taken—
  - (a) of the giving of the authorization;
  - (b) of the grounds for giving it;
  - (c) that any DNA information derived from the sample may be permanently stored in the DNA database maintained under section 59G(1) and may be used for the purposes specified in subsection (2) of that section; and
  - (d) that the person may make a request to a police officer for access to the DNA information derived from the sample.
- (3) A non-intimate sample of a swab from the mouth of a person may only be taken by a police officer who has received training for the purpose.
- (4) A police officer may use such force as is reasonably necessary for the purposes of taking or assisting the taking of a non-intimate sample of a swab from the mouth of a person pursuant to this section.
- (5) The person from whom a non-intimate sample of a swab from the mouth was taken pursuant to subsection (1) is entitled to access to the DNA information derived from the sample.
- (6) A non-intimate sample of a swab from the mouth of a person may only be taken within 12 months after the person has been convicted of a serious arrestable offence.

*(Added 68 of 2000 s. 7)*

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Editorial Note:

\* Commencement date: 1 July 2001.

**59F. Non-intimate samples given voluntarily**

- (1) Any person who has attained the age of 18 years may voluntarily give an authorization to a police officer of the rank of superintendent or above—
  - (a) for the taking of a non-intimate sample from him (*volunteer*);
  - (b) for the storage of DNA information derived from the sample in the DNA database maintained under section 59G(1); and
  - (c) for the use of the DNA information for the purposes specified in section 59G(2).
- (2) An authorization given under subsection (1) must be in writing and signed by the volunteer.
- (3) A police officer of the rank of superintendent or above may accept the authorization given under subsection (1).
- (4) Where an authorization has been given pursuant to subsection (1), a police officer shall, before the taking of a non-intimate sample, inform the person from whom the sample is to be taken—
  - (a) the DNA information derived from the sample may be stored in the DNA database maintained under section 59G(1) and may be used for the purposes specified in subsection (2) of that section;
  - (b) that he may make a request to a police officer for access to the information; and
  - (c) that he may at any time withdraw his authorization given for the purposes referred to in subsection (1)(b) and (c).
- (5) A non-intimate sample may only be taken from a person by—

- (a) a registered medical practitioner; or
  - (b) a police officer, or a public officer working in the Government Laboratory, who has received training for the purpose.
- (6) Where a non-intimate sample is taken from a volunteer pursuant to this section, the volunteer may, at any time by notice in writing to the Commissioner, withdraw his authorization given for the purposes referred to in subsection (1)(b) and (c).

*(Added 68 of 2000 s. 7)*

**59G. DNA database**

- (1) There shall be maintained (whether in computerized form or otherwise), by the Government Chemist on behalf of the Commissioner, a DNA database storing DNA information derived from an intimate sample or a non-intimate sample taken from a person pursuant to—
- (a) section 59A or 59C if the person has been subsequently convicted of any serious arrestable offence;
  - (b) section 10E of the Independent Commission Against Corruption Ordinance (Cap. 204) if the person has been subsequently convicted of any serious arrestable offence;
  - (c) section 59E; or
  - (d) section 59F.
- (2) No person shall—
- (a) have access to any information stored in the DNA database; or
  - (b) disclose or use any such information, except to the extent necessary for the purposes of—

- (i) forensic comparison with any other DNA information in the course of an investigation of any offence by a police officer or an officer of the Independent Commission Against Corruption;
  - (ii) producing evidence in respect of the DNA information in any proceedings for any such offence;
  - (iii) making the information available to the person to whom the information relates;
  - (iv) administering the DNA database for the purposes of or connected with any of the following—
    - (A) paragraph (i), (ii) or (iii) or subsection (1);
    - (B) section 59H; or
  - (v) any investigation or inquest into the death of a person under the Coroners Ordinance (Cap. 504).
- (3) Any person who contravenes subsection (2) commits an offence and is liable on conviction to a fine at level 4 and to imprisonment for 6 months.

*(Added 68 of 2000 s. 7)*

**59H. Disposal of samples and records, etc.**

- (1) The Commissioner shall take reasonable steps to ensure that—
- (a) an intimate sample or a non-intimate sample taken pursuant to section 59A or 59C; and
  - (b) a record to the extent that it contains information about the sample and particulars that are identifiable by any person as particulars identifying that information with the person from whom the sample was taken,
- which may be retained by him or on his behalf are destroyed as soon as practicable after—

- 
- (i) if the person has not been charged with any offence, the expiry of—
    - (A) subject to subparagraph (B), 12 months from the date on which the sample was taken (*the relevant period*); or
    - (B) such further period or periods as may be extended under subsection (2) (*the extended period*);
  - (ii) if the person has been charged with one or more offences within the relevant period and the extended period, if any—
    - (A) the charge or all the charges, as the case may be, is or are withdrawn;
    - (B) the person is discharged by a court before conviction of the offence or all the offences, as the case may be; or
    - (C) the person is acquitted of the offence or all the offences, as the case may be, at trial or on appeal, whichever occurs first.
- (2) A police officer of or above the rank of chief superintendent may extend or further extend the relevant period for not more than 6 months for each extension if he is satisfied on reasonable grounds that it is necessary to the continuing investigation of the offence or offences in relation to which the sample was taken that the sample and the record concerned be retained.
- (3) Subsection (1) shall not affect any DNA information which has already been permanently stored in the DNA database pursuant to section 59G(1)(a), (b) or (c).
- (4) Without prejudice to the operation of subsections (1) and (2), if—

- (a) a person from whom an intimate sample or a non-intimate sample was taken pursuant to section 59A or 59C has been convicted of one or more offences; and
- (b) there is no other charge against the person in relation to an offence which renders the retention of the sample necessary,

then the Commissioner shall take reasonable steps to ensure that the sample which may be retained by him or on his behalf is destroyed as soon as practicable after the conclusion of all proceedings (including any appeal) arising out of the conviction.

- (5) Where a non-intimate sample of a swab was taken from the mouth of a person pursuant to section 59E and his conviction of the relevant serious arrestable offence has been subsequently quashed on appeal other than an order of re-trial, the Commissioner shall take reasonable steps to ensure that any DNA information derived from the sample which may be retained by him or on his behalf is destroyed as soon as practicable after the conviction is quashed.
- (6) The Government Chemist, whilst maintaining the DNA database under section 59G(1), shall take reasonable steps to ensure that every non-intimate sample taken pursuant to section 59E or 59F is retained only for as long as is necessary to enable DNA information to be obtained from the sample, and is then destroyed.
- (7) Where a non-intimate sample is taken from a person pursuant to section 59F and that person subsequently serves a notice to the Commissioner under subsection (6) of that section, the Commissioner shall take reasonable steps to ensure—
  - (a) in case the sample has not been analysed, that the sample is destroyed as soon as practicable;

- (b) in case the sample has been analysed but DNA information derived from the sample has not been stored in the DNA database pursuant to section 59G(1)(d), that the DNA information is destroyed as soon as practicable;
- (c) in case DNA information derived from the sample has been stored in the DNA database pursuant to section 59G(1)(d), that the DNA information is removed from the DNA database and destroyed as soon as practicable, after the Commissioner receives the notice.

*(Added 68 of 2000 s. 7)*

**59I. Amendment of Schedules 2 and 3**

The Chief Executive in Council may by order published in the Gazette amend Schedule 2 or 3 but any order to amend any Schedule shall be subject to the approval of the Legislative Council.

*(Added 68 of 2000 s. 7)*

**60. Protection of police officer acting in execution of warrant**

In case any action is brought against any police officer for any act done in obedience to the warrant of any magistrate, such officer shall not be responsible for any irregularity in the issuing of the warrant or for any want of jurisdiction in the magistrate issuing the same and he may plead the general issue and give such warrant in evidence; and on production of the warrant and proof that the signature thereto is the handwriting of a person reputed to be a magistrate and that the act was done in obedience to the warrant, the jury or court shall find a verdict or give judgment for the defendant who shall also recover double his costs of suit.

**61. Penalty on victualler, etc. harbouring police officer while on duty**

Any keeper of any place for the entertainment of the public whether spirituous liquors are sold thereon or not, who knowingly harbours or entertains any police officer on duty, or permits him to remain in such place while on duty, shall be liable on summary conviction to a fine of \$250.

**62. Penalty on persons causing disaffection in police force**

If any person causes, or attempts to cause, or does any act calculated to cause disaffection amongst the members of the police force, or induces, or attempts to induce, or does any act calculated to induce any member of the police force to withhold his services or to commit breaches of discipline, he shall be guilty of an offence and shall be liable on summary conviction to a fine of \$2,000 and to imprisonment for 2 years.

*(Added 29 of 1950 s. 16)*

**63. Penalty on person assaulting, etc. police officer in execution of duty, or misleading officer by false information**

Any person who assaults or resists any police officer acting in the execution of his duty, or aids or incites any person so to assault or resists, or refuses to assist any such officer in the execution of his duty when called upon to do so, or who, by the giving of false information with intent to defeat or delay the ends of justice, wilfully misleads or attempts to mislead any such officer, shall be liable on summary conviction to a fine of \$5,000 and to imprisonment for 6 months.

*(Amended 42 of 1977 s. 16)*

**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 \$1,000 and to imprisonment for 6 months.

*(Added 16 of 1959 s. 2)*

**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)*

**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)*
- (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)*

**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 subsection 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 E.R. 2 of 2014*)

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## Schedule 1

[s. 26]

### Oath or Declaration of Office

I, .....  
swear by Almighty God  
do solemnly and sincerely } that I will well and faithfully serve the  
declare

Government of 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 of 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.

.....  
*Signature.*

SWORN }  
DECLARED } before me  
this day of , 19 . }

.....  
*Magistrate/Gazetted Police Officer.*

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Schedule 1

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*(Replaced 29 of 1950 s. 18. Amended 11 of 1968 Schedule; 47 of  
1997 s. 10; 76 of 1999 s. 3; 68 of 2000 s. 8)*

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## Schedule 2

[ss. 3 & 59I]

### Offences Specified as Serious Arrestable Offences

| Offence                        | Descriptions*                                                       |
|--------------------------------|---------------------------------------------------------------------|
| Crimes Ordinance<br>(Cap. 200) |                                                                     |
| section 24                     | criminal intimidation                                               |
| section 25                     | assaults with intent to cause certain acts to be done<br>or omitted |
| section 118F                   | <i>(Repealed 18 of 2014 s. 9)</i>                                   |
| section 120                    | procurement by false pretences                                      |
| section 124                    | intercourse with girl under 16                                      |
| section 132                    | procurement of girl under 21                                        |

\*Note: The short description of offences in this Schedule is for ease of reference only.

*(Schedule 2 added 68 of 2000 s. 9)*

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## **Schedule 3**

[ss. 59B & 59I]

### **Application for and Giving of a Magistrate's Approval for the Taking of Intimate Samples**

1. An application under section 59B of this Ordinance must be made in Form 1. A copy of the authorization duly given pursuant to section 59A(2) of this Ordinance and of appropriate consent duly given and signed under section 59A(6) of this Ordinance must be exhibited to Form 1.
2. Form 1 together with the exhibits referred to in section 1 must be submitted to a magistrate.
3. A magistrate, on receiving the application, may—
  - (a) give his approval if he is satisfied that—
    - (i) an authorization has been duly given pursuant to section 59A(2) of this Ordinance;
    - (ii) there are reasonable grounds—
      - (A) for suspecting that the person from whom the intimate sample is to be taken has committed a serious arrestable offence; and
      - (B) for believing that the sample will tend to confirm or disprove the commission of the offence by that person; and
    - (iii) the appropriate consent has been duly given under section 59A(6) of this Ordinance;

- (b) order that an inter partes hearing shall be conducted in private for the purposes of determining whether the approval should be given or not if he considers that it is necessary in the interest of justice to do so; or
  - (c) reject the application if he thinks fit to do so.
- 4. An order made under section 3(b) must specify a hearing date and must be served on the applicant and the respondent not less than a period as may be directed by the magistrate before the specified hearing date.
- 5. Where an order has been duly served under section 4, the applicant and the respondent must attend before the magistrate on the hearing date specified in the order. The respondent may be represented by his legal representative. The applicant and the respondent (or his legal representative, if any) may make representations at the hearing.
- 6. The magistrate, upon hearing the parties, may—
  - (a) give his approval if he is satisfied that—
    - (i) an authorization has been duly given pursuant to section 59A(2) of this Ordinance;
    - (ii) there are reasonable grounds—
      - (A) for suspecting that the person from whom the intimate sample is to be taken has committed a serious arrestable offence; and
      - (B) for believing that the sample will tend to confirm or disprove the commission of the offence by that person; and

- (iii) the appropriate consent has been duly given under section 59A(6) of this Ordinance; or
- (b) reject the application if he thinks fit to do so.

7. The approval under sections 3(a) and 6(a) must be given in Form 2.

Form 1

APPLICATION FOR AN APPROVAL FOR THE TAKING  
OF AN INTIMATE SAMPLE

Section 59B of the Police Force  
Ordinance (Cap. 232)

Application No.

Writ No.

TO A MAGISTRATE OF HONG KONG  
IN THE MAGISTRATES COURT AT .....

I, ..... (name of the applicant), apply for an approval to the taking of an intimate sample, namely ..... , from ..... (name of the suspect) on the following grounds—

- (a) ..... , a police officer of the rank of superintendent or above on ..... (date) has given an authorization (which is exhibited to this form) to the taking of the sample from the said person as he has reasonable grounds—

- (i) for suspecting that the said person has committed a serious arrestable offence, namely an offence contrary to section ..... of the ..... Ordinance (Cap. ....); and
- (ii) for believing that the sample will tend to confirm or disprove the commission of the offence by the said person, relying on the following facts—

(b) the appropriate consent has been given (which is exhibited to this form).

Dated this                      day of                      (year).

.....  
*Applicant.*  
(signature)

Form 2

APPROVAL FOR THE TAKING OF AN INTIMATE SAMPLE

Section 59B of the Police Force  
Ordinance (Cap. 232)

Application No.

Writ No.

HONG KONG.      IN THE MAGISTRATES COURT AT .....

To each and all of the police officers of Hong Kong.

APPLICATION has been made to the undersigned, a magistrate of Hong Kong, by ..... (name of the applicant) on ..... (date) and the undersigned magistrate, relying on the facts specified in the said application upon hearing the parties on ..... (date)\* has satisfied that—

- (a) ..... , a police officer of the rank of superintendent or above on ..... (date) has duly given an authorization to the taking of an intimate sample, namely ..... from ..... (name of the suspect);
- (b) there are reasonable grounds—
  - (i) for suspecting that the said person has committed a serious arrestable offence, namely an offence contrary to section ..... of the ..... Ordinance (Cap. ....); and
  - (ii) for believing that the sample will tend to confirm or disprove the commission of the offence by the said person; and

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(c) the appropriate consent has been duly given.

You are herewith approved to bring the said person to a registered medical practitioner/registered dentist\* for the intimate sample, namely ..... , to be taken from him/take the intimate sample namely ..... from the said person\*.

Dated this                      day of                      (year).

.....  
*Magistrate*

[L. S.]

\* Delete whichever is inapplicable.

*(Schedule 3 added 68 of 2000 s. 10)*