

BERMUDA STATUTORY INSTRUMENT

BR 54/1981

PRISON OFFICERS (DISCIPLINE, ETC.) RULES 1981

*[made under section 32 of the Prisons Act 1979 [title 10 item 32] and
brought into operation on 6 November 1981]*

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PRELIMINARY

Citation

- 1 These Rules may be cited as the Prison Officers (Discipline etc.) Rules 1981.

Interpretation

- 2 In these Rules—

"adjudicating officer" means an officer not below the rank of Assistant Commissioner, assigned by the Commissioner to hear and determine a charge for an alleged offence against discipline under these Rules;

"Commissioner" means the Commissioner of Prisons;

"ex-prisoner" means a person who has been detained in a prison by reason of a sentence of imprisonment or of preventive detention and includes a person who has been detained in the senior training school;

"offence against discipline", in relation to an officer, means an act or omission of the officer which is declared to be an offence against discipline by rule 12;

"officer" means any public officer in the Department of Corrections;

"officer's record of service" means the record of service of an officer maintained in accordance with rule 11;

"on special probation", in relation to an officer, means on probation in accordance with and subject to the provisions of rule 29;

"prison" means any building, buildings or premises declared to be a prison under the Prisons Act 1979 [*title 10 item 32*] or declared to be a senior training school under the Young Offenders Act 1950 [*title 10 item 33*];

"prisoner" means a person lawfully detained in a prison;

"senior officer" means the officer for the time being in charge of any prison where any alleged offence against discipline occurs or where any other occurrence takes place which is relevant for the purposes of these Rules.

[Regulation 2 amended by 2002:17 s.4 effective 14 December 2002]

GENERAL DUTIES AND OBLIGATIONS OF OFFICERS

General obligations of officers

3 (1) Every officer shall conform to these Rules and to the Prison Rules 1980 [*title 10 item 32(a)*] and to the administrative regulations of each prison, and shall support the Commissioner in the maintenance thereof.

(2) Every officer shall obey the lawful instructions of the Commissioner and any officer whose orders it is for the time being his duty to obey.

(3) Every officer shall at once communicate to the Commissioner or the senior officer any abuses or impropriety which come to his notice.

Duty of officers in connection with ill, etc., prisoners

4 Every officer shall direct the attention of the Commissioner to any prisoner (whether he complains or not) whose health appears to be deteriorating or whose state of mind appears to be deserving of special notice and care.

Restriction on business transactions of officers

5 (1) No officer shall without the proper authority of the Commissioner, carry out any pecuniary or business transaction with or on behalf of a prisoner.

(2) No officer shall without the proper authority bring in or carry out, or attempt to bring in or carry out, or knowingly allow to be

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brought in or carried out, to or for a prisoner, or deposit in any place with the intent that it should come into the possession of a prisoner, any article or thing whatsoever.

Prohibition of acceptance of gratuities etc. by officers

6 No officer shall accept or receive any unauthorized fee, gratuity or other consideration in connection with the performance of his duties.

Relations by officers with prisoner, ex-prisoner, etc.

7 No officer shall without proper authority engage in personal relations with a prisoner or ex-prisoner.

Liability of officers to be searched

8 Every officer, if so required by the senior officer, shall submit himself to be searched while within a prison.

Communication by officers to press, etc.

9 (1) No officer shall, without the proper authority of the Commissioner, directly or indirectly make any communication to representatives of the press or other persons with reference to matters which have become known to him in the course of his duty.

(2) No officer shall, without the proper authority of the Commissioner, publish any matters or make any public pronouncement relating to any prison or prisoner or ex-prisoner, or relating to the administration of the Department of Corrections.

[Regulation 9(2) amended by 2002:17 s.4 effective 14 December 2002]

Duty of officers to serve during term of engagement

10 Every officer shall, unless and until he has resigned or been found by a Medical Board to be permanently unfit for duty, or dismissed from his office, be liable to serve as an officer for the term of the engagement under which he was appointed to be an officer.

OFFICER'S RECORD OF SERVICE

Officer's record of service

11 (1) The Commissioner shall cause a comprehensive record of service, in such form and containing such particulars as the Minister may from time to time approve, to be maintained in respect of every officer.

(2) Any such record of service shall be continuous, notwithstanding that an officer after serving in a prison is appointed to be a training school officer in the senior training school, or, having been a training school officer in the senior training school, is appointed to be an officer for duties in a prison.

DISCIPLINE

Offences against discipline by officers

12 An officer shall be guilty of an offence against discipline—

- (a) if he fails to conform to these Rules or to the Prison Rules 1980 [*title 10 item 32(a)*];
- (b) if he, without good and sufficient cause, fails to carry out any lawful order, whether or not the order is in writing;
- (c) if he is insubordinate towards any officer whose orders it is for the time being his duty to obey;
- (d) if he neglects, or without good and sufficient cause fails, promptly and diligently to do anything which it is his duty as an officer to do;
- (e) if he by carelessness or neglect in the course of his duty contributes to the occurrence of any loss, damage or injury to any person or to any property;
- (f) if he knowingly makes any false, misleading or inaccurate statement in connection with the performance of this duties, either orally or in any official document or book, or if he signs any such statement, or if he, with intent to deceive, destroys or mutilates any such document or book or alters or erases any entry therein;
- (g) if he without proper authority—
 - (i) divulges any matter which it is his duty to keep secret;
 - (ii) directly or indirectly communicates to any representative of the press or to any other person any matter which has become known to him in the course of his duty; or
 - (iii) publishes any matter or makes any public pronouncement relating to prisons or to prisoners or to ex-prisoners, or relating to the administration of the Department of Corrections;
- (h) if he solicits, accepts or receives any unauthorized fee, gratuity or other consideration in connection with the performance of his duties;
- (i) if he fails to account for, or to make a prompt and true return of, money or other property for which he is responsible, whether in connection with the performance

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- of his duties as an officer, or with any club or fund connected with a prison or the members of the staff of the prison;
- (j) if he improperly uses his position as an officer for his private advantage;
 - (k) if he without proper authority—
 - (i) knowingly carries out any pecuniary or business transaction with or on behalf of a prisoner or ex-prisoner; or
 - (ii) brings in or carries out, or attempts to bring in or carry out, or knowingly allows to be brought in or carried out, to or for any prisoner any article or thing whatsoever; or
 - (iii) accepts any present or consideration from any prisoner or ex-prisoner or from a friend or relative of any prisoner or ex-prisoner;
 - (l) if he without proper authority—
 - (i) knowingly communicates with any ex-prisoner;
 - (ii) knowingly takes into his employment an ex-prisoner;
 - (m) if he communicates with a prisoner for an improper purpose;
 - (n) if he allows any undue familiarity between a prisoner and himself or any other officer or other member of the staff of the prison;
 - (o) if he discusses his duties, or any matters of discipline or prison administration, within the hearing of a prisoner;
 - (p) if he deliberately acts in a manner calculated to provoke a prisoner;
 - (q) if he, in dealing with a prisoner, uses force unnecessarily or, where the application of force to a prisoner is necessary, uses undue force;
 - (r) if he, without proper authority or reasonable excuse—
 - (i) is absent from the prison or from any parade or place of duty; or
 - (ii) is late for any duty or parade;
 - (s) if he wilfully or negligently damages or loses any article of clothing or personal equipment with which he has

- been provided or entrusted or if he fails to take proper care thereof;
- (t) if he neglects to report any damage to, or loss of, any article of clothing or personal equipment with which he has been provided or entrusted, however such damage or loss was caused;
 - (u) if he, when on duty or liable to be called upon for duty is unfit for duty through the effect of intoxicating liquor;
 - (v) if he, while on or off duty, acts in a disorderly manner, or in any manner prejudicial to discipline, or likely to bring discredit on the Department of Corrections;
 - (w) if he smokes or drinks intoxicating liquor, either while within a prison (except under such restrictions as may from time to time be ordered by the senior officer), or while on duty in a court, or while in charge of prisoners outside a prison;
 - (x) if he borrows money from an officer subordinate or junior to him in rank, or lends money to his superior officer or becomes security for a fellow officer in borrowing money;
 - (y) if he persistently fails to discharge his personal indebtedness to any club or fund connected with any prison or the staff of any prison.

[Regulation 12(g)(iii) & 12(v) amended by 2002:17 s.4 effective 14 December 2002]

Charges against junior officers

13 (1) A charge against an officer of the rank of Divisional Officer or below for an offence against discipline shall be instituted in accordance with these Rules by being entered on a charge sheet by the senior officer concerned as soon as possible after consideration of the report on which the charge is based.

(2) The charge sheet shall specify the sub-paragraph of rule 12 under which the charge is laid and the charge shall include sufficient particulars to inform the accused officer of the specific act or omission in respect of which the charge is laid.

(3) The charge sheet shall be handed to the accused officer as soon as possible, together with the report on which the charge is based and any additional written statements which it is proposed to adduce in support of the charge. The report and statements (if any) shall be signed by the officer or other person by whom they are made and the accused officer shall initial them to show that he has seen them, and shall return them as soon as practicable. The accused officer shall be allowed a

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reasonable opportunity to copy the documents for the purpose of his defence, and shall, if he so requests, be given a copy of them.

Reply to charge by officer

14 The accused officer shall as soon as possible, and in any case not later than the commencement of the tour of duty next following the receipt by him of the charge sheet, state in writing upon the charge sheet his reply to the charge and shall give the names of any witnesses to material facts whom he desires to call at the hearing:

Provided that the senior officer may, in particular cases, extend the time within which the reply of the accused officer to the charge is to be made, or the time within which the names of such witnesses are to be given.

Hearing etc. by adjudicating officer

15 (1) As soon as may be after a charge sheet has been handed to an accused officer in accordance with rule 13 and after he has been given an opportunity to state his reply to the charge under rule 14, the Commissioner shall assign an adjudication officer, not below the rank of Assistant Commissioner, to hear and determine the charge.

(2) The following provisions of this rule shall govern the procedure to be followed—

- (a) if the officer admits the charge, the adjudicating officer, after hearing him and any witnesses he may wish to call in extenuation or explanation and any other witness whom the adjudicating officer may think it desirable to call, shall either caution the officer or make a recommendation to the Commissioner for a disciplinary award under rule 18;
- (b) if the officer denies the charge, the adjudicating officer shall as soon as possible arrange for the attendance of all necessary witnesses and, after hearing all the evidence and the explanation (if any) of the accused officer, shall either dismiss the charge or, if he finds the charge proved, caution the officer or make a recommendation to the commissioner for a disciplinary award under rule 18.

Procedure on hearing of charge by adjudicating officer

16 Where the adjudicating officer hears, under rule 15(2)(b), a charge against an officer—

- (a) the accused officer shall be allowed to hear all the evidence given against him (which evidence shall, on his application or by the direction of the adjudicating officer, be given on oath), to cross-examine the witnesses giving

such evidence, and to examine the witnesses called in his defence; and

- (b) the adjudicating officer shall take or cause to be taken notes of the statements made in evidence or under examination or cross-examination, and of any statement made before him by the accused officer, and the notes shall be signed by the person by whom each statement was made.

Assistance in defence

17 (1) If the accused officer so desires, he shall be allowed in all cases to have another officer, selected by himself, as a friend or, if he so elects, a representative of the Prison Officers Association, to assist him in presenting his case to the adjudicating officer.

(2) The friend of the accused officer or Association representative may advise him on all points and may suggest the questions to be put to witnesses and may, if desired by the accused officer, examine or cross-examine the witnesses and address the adjudicating officer on behalf of the accused officer.

Disciplinary awards

18 (1) The adjudicating officer may recommend to the commissioner the making of any of the following disciplinary awards, that is to say—

- (a) admonition;
- (b) reprimand;
- (c) severe reprimand;
- (d) special probation in accordance with rule 29 for a term not exceeding twelve months;
- (e) fine not exceeding two hundred and fifty dollars;
- (f) reduction in rank; or
- (g) dismissal,

and shall announce to the accused officer at the close of the proceedings the nature of his recommendation.

(2) Upon consideration of the recommendations of the adjudicating officer the Commissioner may, subject to paragraph (3), either—

- (i) accept the recommendation and make the disciplinary award accordingly; or

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- (ii) vary the recommendation and in lieu thereof make any other disciplinary award that might have been recommended under this rule (whether more or less severe than so recommended); or
- (iii) reject the recommendation and either order that the charge be dismissed or order a fresh hearing to be held before the same or another adjudicating officer.

(3) No award under paragraph (1)(e) exceeding a fine of fifty dollars and no award under paragraph (1)(d), (f) or (g) shall be made by the Commissioner unless and until the approval of the Public Service Commission has been given to the making of that award against the accused officer in respect of that charge.

Information concerning the award

19 The Commissioner shall inform the accused officer of the disciplinary award (if any) which he has made unless it is an award referred to in rule 18(3) in which case he shall inform the accused officer that he has referred the matter to the Public Service Commission.

Reference etc., of awards to Public Service Commission

20 (1) Where the Commissioner proposes to make any of the disciplinary awards referred to in rule 18(3) then he shall as soon as may be transmit to the Public Service Commission—

- (a) the documents referred to in rule 18(3);
- (b) any reply to the charge made by the accused officer under rule 14;
- (c) the notes taken at the hearing of the charge in accordance with rule 16(b);
- (d) a statement of the award recommended by the adjudicating officer and of the reasons for making that recommendation;
- (e) a statement of the award proposed to be made by the Commissioner and, if the award is different to that recommended by the adjudicating officer, the reasons for the difference; and
- (f) a report on the general character and efficiency of the accused officer.

(2) The documents mentioned in paragraphs (1)(d) and (e) shall be shown to and initialled by the accused officer, who shall be allowed to add any further statement which he wishes to submit to the Public Service Commission.

(3) The Public Service Commission shall inform the Commissioner of their determination in the matter of a proposed award under this rule; and the Commissioner shall make an award in conformity with the determination of the Public Service Commission and shall forthwith inform the officer in respect of whom the award is made accordingly.

Recording of disciplinary award

21 (1) Any disciplinary award made by the Commissioner shall be entered on the charge sheet and shall be shown to and initialled by the officer in respect of whom the award was made, and the Commissioner shall cause the award to be entered in the officer's record of service.

(2) Where the charge is dismissed by the adjudicating officer or the Commissioner, or is dealt with by the adjudicating officer or the Commissioner by way of caution without the making of a disciplinary award, no entry shall be made in the officer's record of service.

(3) Any disciplinary award made under rule 18(1)(b) or (c) shall be removed from the record of service of the officer concerned upon application by that officer to the Commissioner for that purpose made not earlier than three years after the award was made and any disciplinary award made under rule 18(1)(d) or (e) shall be so removed upon such application being made for that purpose not earlier than five years after that award was made:

Provided that, in either case, the officer concerned has not had any further disciplinary award made against him during the respective period specified in this paragraph.

(4) The Commissioner shall notify the Secretary of the Public Service Commission of the removal of any disciplinary award from the record of service of any officer in accordance with paragraph (3).

Appeal to Public Service Commission

22 (1) An officer in respect of whom any disciplinary award is made under the provisions of these Rules may within fourteen days; of the notification to him of that award by the Commissioner appeal in writing to the Public Service Commission.

(2) Where an appeal is duly lodged under this rule, the Commissioner shall as soon as may be transmit to the Secretary to the Public Service Commission the documents referred to in rule 13(3), any reply made by the accused officer under rule 14, the notes taken at the hearing of the charge in accordance with rule 16(2)(b) and the statements made under rule 20(1)(d) and (e), together with a written statement by the officer setting out the grounds of his appeal and together with the Commissioner's observations thereon which shall be shown to and initialled by the officer.

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(3) The Public Service Commission shall consider the appeal subject to such procedure as they think just and equitable in the circumstances, and shall determine the appeal; and, where the officer appeals against any disciplinary award, the Public Service Commission may substitute for that award any other disciplinary award which could be made under rule 18 or may direct that the officer shall be cautioned or may make no award.

(4) The Secretary to the Public Service Commission shall cause the Commissioner to be informed of the determination of the appeal; and the Commissioner shall govern himself accordingly, and shall cause the appropriate entry, or deletion of an entry, to be made in the officer's record of service.

Charges against officers of senior rank

23 A charge against an officer of the rank of Principal Officer or above for an offence against discipline shall be instituted and proceeded with in accordance with Part VI of the Public Service Commission Regulations 1968 [*title 2 item 1(d)*].

Suspension of officer from duty

24 (1) Where a charge is laid against an officer under rule 15 the Commissioner may suspend the accused officer from duty if, in his opinion, the offence charged is such that the officer should not continue on duty.

(2) The Commissioner shall immediately report any such suspension to the Secretary to the Cabinet, and shall conform with any directions given by the Secretary to the Cabinet with respect to the payment of the salary of the officer during the period of his suspension from duty.

(3) An officer under suspension from duty shall report daily as directed by the Commissioner.

Payment of fine into Consolidated Fund

25 Any fine imposed on an officer as a disciplinary award made under these Rules shall be paid into the Consolidated Fund.

Recovery of fines

26 A fine imposed on an officer as a disciplinary award made under these Rules shall be recoverable by deduction from the officer's pay over a period not exceeding three months or shall be recoverable in the name of the Commissioner before a court of summary jurisdiction in the manner provided by the Magistrate's Act 1948 [*title 8 item 15*], for the recovery of a debt or liquidated demand.

Return of disciplinary awards

27 The Commissioner shall render to the Secretary to the Public Service Commission a periodic return setting out the names of officers in respect of whom disciplinary awards have been made by the Commissioner, the offences against discipline in respect of which the awards were made, the disciplinary awards made, the offences against discipline (if any) previously committed by each officer, and any remarks which the Commissioner wishes to make.

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Report on unsatisfactory officer

28 (1) The Commissioner shall report to the Public Service Commission any officer who, in his opinion, is inefficient or on whom disciplinary awards are failing to secure improvement in the officer's conduct.

(2) Before submitting the report to the Public Service Commission, the Commissioner shall show it to the officer and it shall be initialled by him and the Commissioner shall, on submitting the report to the Public Service Commission, attach any statement which the officer may wish to make in extenuation or explanation.

(3) The Public Service Commission on considering the report and any statement made by the officer and attached thereto may direct that the officer be cautioned or may direct that he be placed on special probation for a period not exceeding twelve months.

Special probation of officer

29 (1) The object of special probation is to give an officer, in respect of whom doubt has been thrown as to his fitness to remain as an officer, an opportunity to show that he is capable of improvement.

(2) When an officer has been placed on special probation, the Commissioner shall at the end of the first three months and quarterly thereafter transmit to the Public Service Commission a report on the conduct and efficiency of the officer. The report shall be shown to the officer by the Commissioner, who shall add a note that he has done so on the report, and the report shall be initialled by the officer.

(3) At any time after the first six months of the period of special probation the Public Service Commission may, if on consideration of the quarterly reports he considers that the officer is unlikely to become an efficient prison officer, direct that he be warned that, unless a marked improvement is shown on the next report, he will be liable to be removed from office.

(4) Where the period of special probation is for less than twelve months, and the Public Service Commission on consideration of the final

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report is not satisfied that the officer has shown sufficient improvement, the Public Service Commission may by order extend the period of special probation up to the maximum period of twelve months, and at the same time may, if necessary, direct that the officer be warned in the manner provided in paragraph (3).

(5) Where it appears to the Public Service Commission from the reports transmitted by the Commissioner under the foregoing provisions of this rule that the officer's conduct and efficiency has shown a marked improvement the Public Service Commission may direct that the foregoing provisions of this rule shall cease to have effect in relation to that officer.

Revocation and saving

30 [omitted]

[Amended by:

2002 : 17]