

**POLICE (SPECIAL CONSTABLES) (DISCIPLINE)
REGULATIONS, 2020**

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Special Constabulary Disciplinary Code

S.I. 2020 No.

Police Act

CAP. 167

**POLICE (SPECIAL CONSTABLES) (DISCIPLINE)
REGULATIONS, 2020**

The Minister, in exercise of the powers conferred on him by section 77 (1) (c) and (f) of the *Police Act*, makes the following Regulations:

Citation

1. These Regulations may be cited as the *Police (Special Constables) (Discipline) Regulations, 2020*.

Interpretation

2. In these Regulations,

“accused officer” means an officer who is charged with an offence against discipline;

“Disciplinary code” or “Code” means the Special Constabulary Disciplinary Code established under regulation 3;

“disciplinary officer” means an officer who is appointed by the Commissioner to hear a disciplinary charge;

“Force” means the Royal Barbados Police Force and the Force of the Barbados Special Constabulary;

“investigating officer” means the officer who is appointed under regulation 6 (3) to investigate disciplinary charges against an accused officer;

“misconduct” means an act or omission by an officer that constitutes an offence under the Disciplinary Code;

“Officer” means a special constable;

“Presiding officer” means the Commissioner or the disciplinary officer conducting the hearing under these Regulations;

“prosecuting officer” means the officer presenting the case against the accused officer in accordance with regulation 13.

Special Constabulary Disciplinary Code

3.(1) There is hereby established a Special Constabulary Disciplinary Code.

(2) The Code is set out in the Schedule.

(3) A member of the Force who is in breach of the Disciplinary Code commits an offence against discipline.

Penalties for breach of Disciplinary Code

4.(1) The penalties that may be imposed by the Commissioner for breach of the Disciplinary Code are:

- (a) a fine not exceeding \$300;
- (b) stopping of leave at the Commissioner's discretion;
- (c) reprimand or severe reprimand;
- (d) suspension, deferment or withholding of an increment; or
- (e) punishment drill for any number of days not exceeding 14;

(2) The penalties that may be imposed by a disciplinary officer to whom power to discipline has been delegated are:

- (a) stopping of leave at the discretion of the officer;
- (b) punishment drill for any number of days not exceeding 7
- (c) reprimand or severe reprimand.

(3) No advance in pay except an additional or special increment that is subject to good character or conduct shall be deferred, suspended or withheld by reason only of the infliction of a fine.

(4) The punishment of a fine shall not be imposed for the offence specified in paragraph (q) of the Disciplinary Code.

Other offences

5.(1) Any special constable who

- (a) begins, raises, abets, countenances or incites mutiny, or causes or joins in any seditious disturbance amongst the members of the Force; or
- (b) having knowledge of any actual or intended mutiny, rebellion or insurrection, does not without delay give information thereof to a gazetted police officer or to a Justice of the Peace, shall be guilty of an offence and on summary conviction shall be liable to imprisonment for a period of 3 months.

(2) Any member of the Force who

- (a) being present at any unlawful assembly does not use his utmost endeavour to suppress the unlawful assembly;
- (b) assaults a Justice of the Peace or any other member of the Force;
- (c) without lawful excuse draws or lifts, or threatens to draw or lift, any weapon or threatens any violence against any Justice of the Peace or other member of the Force;
- (d) wilfully permits the escape of a prisoner;
- (e) uses unnecessary violence to or ill-uses any prisoner;
- (f) pawns, sells, makes away with or wilfully spoils or damages his arms, accoutrements, clothing or any public property,

is guilty of an offence and liable, on summary conviction to a fine of \$500 or to imprisonment for 3 months or to both.

Hearing of charges

- 6.(1) Subject to paragraph (2) and to regulation 9, a charge against an officer for breach of the Disciplinary Code shall be heard by the Commissioner.
- (2) The Commissioner may delegate the duty to hear charges against officers to
- (a) any gazetted police officer; or
 - (b) a disciplinary tribunal.
- (3) The Commissioner or a disciplinary officer may appoint an investigating officer to investigate a matter where he thinks it necessary.
- (4) The presiding officer shall have the same powers in respect of securing and compelling the attendance of witnesses and their examination at the hearing in respect of the offence as are conferred upon a magistrate under the *Magistrate's Courts Act*, Cap. 116A.

Serious charges

- 7.(1) Where a disciplinary officer begins to try a charge in pursuance of a delegation under regulation 6(2), he may, if the facts indicate that it is of a more serious nature than at first appeared, complete the hearing and submit a record of the proceedings together with a summary of his findings to the Commissioner.
- (2) The Commissioner shall consider the record and summary submitted under paragraph (1) and give his decision thereon, or he may convene a hearing to take such additional evidence as he considers necessary.

Certain officers not to try charges

- 8.(1) An officer who has acted as an investigating officer or who has attempted to resolve a complaint informally shall not, in respect of that case, exercise any duty or function in pursuance of a delegation under regulation 6 (2).

(2) The Commissioner may, where he witnesses the commission of an offence against discipline by an officer, carry out any investigation he thinks fit and punish that officer.

Disciplinary Tribunal

9.(1) Where the Commissioner considers a charge to be serious, he may appoint a tribunal to determine whether an accused officer is guilty of an offence against discipline and the tribunal shall comprise

- (a) a Chairman, who shall be the Commissioner or a gazetted officer; and
- (b) two officers of or above the rank of inspector who have not been concerned with the case.

(2) The decision of the tribunal as to whether the accused officer is guilty of the charge may be by a majority decision.

(3) Where the Commissioner is not the Chairman of the tribunal, the Chairman shall submit the findings of the tribunal to the Commissioner, who may upon a finding of guilty of the offence charged

- (a) determine any punishment to be imposed on the officer; or
- (b) make a recommendation to the Administrative, General and Professional Service Commission.

Administrative directives

10. The Commissioner shall issue administrative directives setting out the procedure to be followed by the disciplinary tribunal.

Accused officer to be informed of charge

11. An officer against whom it is proposed to take disciplinary proceedings under these Regulations shall, as soon as practicable, be informed in writing of the charge against him, and be given an adequate opportunity to prepare his defence.

Charge to disclose offence

12. A charge brought against an officer shall disclose an offence against discipline as set out in the Disciplinary Code, and shall contain such particulars as may be necessary for giving reasonable information as to the nature of the charge.

Hearing

13.(1) An accused officer shall be ordered to attend the hearing of the charge, which shall be held in private.

(2) The case against the accused officer shall be presented by an officer of or above the rank of Inspector.

(3) The accused officer may,

(a) conduct his defence in person or be represented by an attorney-at-law;
or

(b) with the approval of the Commissioner, be represented by an officer of or above the rank of the accused officer.

(4) The presiding officer and the representative of the accused officer may be assisted by a serving officer and, where the case for the accused officer is presented by an attorney-at-law, the presiding officer may be assisted by an attorney-at-law.

Record of proceedings and transcripts

14.(1) A verbatim record of the proceedings at the hearing of the case shall be taken.

(2) As soon as practicable after the hearing,

(a) a transcript of the record; and

(b) a copy of the covering report, if it would not be prejudicial to national security, shall be supplied to the accused officer.

(3) The Commissioner shall make such arrangements for the recording of the proceedings as he thinks necessary.

Admitting evidence

15.(1) The determination as to whether any evidence should be admitted or whether any question should or should not be put to a witness shall be made by the presiding officer subject to the rules governing the admissibility of evidence.

(2) Subject to paragraphs (3) and (4), the presiding officer may admit evidence by way of a written statement made by a person notwithstanding that such person may not be called as a witness.

(3) Evidence under paragraph (2) shall not be admissible if it would not be admissible had it been given orally.

(4) For the purposes of this regulation, a written statement purported to be made and signed by a person and witnessed by another person, shall be presumed to have been made by the person signing unless the contrary is shown.

Written Evidence

16.(1) Subject to paragraph (4), if either the accused officer or the prosecuting officer proposes to adduce written evidence under this regulation, that party

- (a) shall give the other party a copy of the statement at least 14 days before the date of the hearing; and
- (b) shall invite the other party to agree or object in writing to the admission of the statement in evidence without the maker thereof being called as a witness and being made available for cross-examination.

(2) If a party within 7 days of the receipt by him of the copy of the statement has objected, the statement shall only be admitted in evidence if the maker thereof is called and is available for cross-examination.

(3) If the parties agree in writing in respect of a particular statement, paragraph (1) shall have effect in relation to the statement as though the reference to a period of 14 days were a reference to such shorter period, expiring before the date of the hearing, as they may agree.

(4) Notwithstanding paragraphs (1), (2) and (3), if at the hearing either party wishes to introduce in evidence a written statement without the maker thereof being called or without a copy of the statement being made available to the other party in accordance with this regulation, the presiding officer may, with the agreement of the other party, allow the statement to be introduced.

(5) Where a written statement is admitted in evidence under this regulation without the maker being called, and

- (a) the presiding officer is of the opinion that oral evidence should be given, he may request that the maker be called as a witness; and
- (b) if the maker does not give oral evidence, the presiding officer may disregard the written statement.

(6) For the purposes of this regulation, "parties" means the accused officer and the prosecuting officer.

Adjournment

17. The presiding officer may from time to time adjourn the hearing if it appears to him necessary or expedient for the due hearing of the charge, and that officer shall have regard to the need to have the hearing of charges determined expeditiously.

Attendance at hearing

18.(1) If the accused officer without good or sufficient cause fails, refuses or neglects to attend a hearing of the charge, the hearing may be conducted and concluded in his absence.

(2) If good reason is given to the presiding officer by or on behalf of the accused officer why that officer is unable to attend the hearing, the presiding officer shall postpone or adjourn the hearing.

(3) Subject to paragraph (4), the presiding officer shall allow the complainant to attend the hearing while witnesses are being examined or cross-examined on the facts alleged in the charge and, if he considers it appropriate so to do on account of the age of the complainant or otherwise, shall allow the complainant to be accompanied by a friend or relative who is not to be called as a witness at the hearing.

(4) Where the complainant is to be called as a witness at the hearing, he and any person allowed to accompany him shall not be allowed to attend before he gives his evidence.

(5) Where it appears to the presiding officer that a witness may, in giving evidence, disclose information which in the public interest ought not to be disclosed to a member of the public, he shall require the complainant and any person allowed to accompany him to withdraw while that evidence is being given.

(6) The complainant and any person allowed to accompany him shall not intervene in nor interrupt the hearing, and where any person behaves in a disorderly or abusive manner or otherwise misconducts himself, the presiding officer may exclude that person from the remainder of the hearing.

Findings

19.(1) The tribunal or presiding officer shall, at its conclusion, dismiss the charge or find it proved.

(2) The accused officer shall be notified in writing of the decision within 14 days of the conclusion of the hearing, and a record shall be made in his personal file.

(3) Where the charge is found proved and the accused officer wishes to appeal or make application for judicial review, a transcript of the record shall on his

request in writing and within any time that may be prescribed, be supplied to him **free of charge.**

Punishment by fines and increments

20.(1) Where the Commissioner proposes to impose a fine on an officer in accordance with regulation 4 (1) (a), the following matters shall be taken into consideration:

- (a)* the officer's standard of efficiency;
- (b)* the general quality of the service of the officer; and
- (c)* the conduct of the officer

(2) Where the Commissioner is of the view that an increment ought to be suspended, deferred or withheld, he shall

- (a)* notify in writing the officer concerned, at least one month before the date on which the increment is due, of the reasons for which he considers that the increment ought to be suspended, deferred or withheld; or
- (b)* where he is unable to notify the officer in accordance with subparagraph (a), report the matter to the Director General, Human Resources.

(3) Where the Commissioner has notified an officer in accordance with paragraph (2)(a), he may suspend, for a period not exceeding 3 months, the payment to that officer of the increment to which the notification relates, and shall at the end of the period of suspension and after considering any further report on the matter

- (a)* grant the increment from the date on which it became due; or
- (b)* recommend for the consideration of the Administrative, General and Professional Service Commission that the increment be further suspended or deferred or withheld.

- (4) Where the Commissioner proposes to suspend, defer or withhold an increment, the Commissioner shall take the following into consideration:
- (a) the nature of the misconduct or dereliction of duty, as the case may be;
 - (b) the subsequent behaviour of the officer;
 - (c) the officer's present degree of efficiency;
 - (d) the fact that suspension of an increment is applicable when for any reason it is thought desirable to reserve judgment and allow for reformation or otherwise;
 - (e) the fact that deferment of an increment is equivalent to a substantial fine; and
 - (f) the fact that withholding an increment may deprive an officer of the amount of that increment during each subsequent year of his service up to the maximum of his scale.
- (5) An increment may be
- (a) suspended for a period not exceeding 3 months; or
 - (b) deferred for a period not exceeding 6 months, including any period for which it has been suspended.
- (6) The Commissioner shall, after considering any report on the matter,
- (a) at the end of the period of suspension of an increment, grant the increment from the date on which it became due;
 - (b) at the end of the period of deferral of an increment, recommend for the consideration of the Administrative, General and Professional Service Commission that the increment be restored or further deferred; or
 - (c) at any time where an increment was withheld, recommend for the consideration of the Administrative, General and Professional Service Commission that the increment be restored.

(7) Where an increment has been withheld, the Governor- General, acting on the advice of the Commission, may at any subsequent incremental date, grant to the officer concerned, a special increment in addition to his ordinary increment.

(8) Where the Commissioner proposes to impose a penalty under regulation 4(1) (a) or (d), he shall give the officer an opportunity to make representations in relation thereto.

Penalties imposed by disciplinary officers

21. Where a disciplinary charge is tried by a disciplinary officer, then, on the conclusion of the trial, that officer shall forward to the Commissioner a record of the proceedings together with his findings and the particulars of any penalty imposed.

Penalties generally

22.(1) Every penalty imposed on an officer who is convicted of an offence against discipline shall be recorded in the service book of that officer.

(2) A fine imposed on an officer by way of penalty for an offence shall be recovered from the pay of the convicted officer by monthly deductions not exceeding \$25, except where an officer is leaving the Force, when the whole amount of the fine then unpaid shall be deducted from any pay or allowance due to the officer.

Criminal proceedings

23.(1) Where criminal proceedings have been instituted against an officer, disciplinary proceedings under the Disciplinary Code upon any grounds arising out of the criminal charge shall not be brought unless

- (a) the criminal proceedings have been concluded;
- (b) the time allowed for appeal has expired; or
- (c) the appeal has been determined or withdrawn.

- (2) An officer acquitted of a criminal charge shall not be punished under the Disciplinary Code in respect of the charge of which he has been acquitted.
- (3) Nothing in this regulation shall prevent an officer from being punished in respect of any other charge arising out of his conduct in the matter, unless such other charge is substantially the same as that in respect of which he has been acquitted.
- (4) If an officer is convicted in any court on a criminal charge, the Commissioner may consider the relevant proceedings of that court, and if the Commissioner is of the opinion that, in the public interest, the officer ought to be subjected to a penalty provided for under the Disciplinary Code, the Commissioner may impose a penalty in accordance with the Disciplinary Code.

Appeal

24.(1) Where a hearing has been conducted in connection with a breach of the Disciplinary Code and the charge has been found proved and a penalty is imposed by a disciplinary officer, the accused officer may appeal to the Commissioner in accordance with this regulation against

- (a) both the findings and the punishment; or
- (b) punishment only.

- (2) The appellant shall give written notice to the Commissioner and shall specify whether the appeal is against both the findings and punishment or the punishment only.
- (3) The notice of appeal shall be given within 14 days of the day on which the accused officer was notified of the punishment.
- (4) As soon as possible after the conclusion of the appeal proceedings, the accused officer shall be notified in writing of the decision and a record made on his personal file.
- (5) The Commissioner shall not, in upholding the original finding, award a greater punishment than the punishment awarded under those proceedings.

SCHEDULE

(Regulation 3 (2))

Special Constabulary Disciplinary Code

The Special Constabulary Disciplinary Code is as follows:

- (a) Discreditable conduct:* a special constable shall not act in a disorderly manner or in any manner prejudicial to discipline or act in a manner that is reasonably likely to bring discredit to the reputation of the Force;
- (b) Misconduct towards another officer:* a special constable shall not

 - (i) engage in oppressive or tyrannical conduct towards another special constable or a member of the Force;
 - (ii) use obscene, abusive or insulting language to any special constable or any member of the Force,
 - (iii) wilfully or negligently make any false complaint or statement against any special constable or any member of the Force;
 - (iv) assault a special constable or a member of the Force; or
 - (v) improperly withhold any report or allegation made against a special constable or a member of the Force;
- (c) Disobedience to orders:* a special constable shall not disobey or without good and sufficient cause omit or neglect to carry out a lawful order, written or otherwise;
- (d) Neglect of duty:* a special constable shall not

 - (i) neglect, or without good and sufficient cause, omit to promptly and diligently attend to or do anything which it is his duty as a member of the Force to do;

- (ii) idle or gossip while on duty;
 - (iii) fail to work the beat of that officer in accordance with orders, or leave the beat, point or other place of duty to which the officer has been ordered without due permission or sufficient cause or, having left the place of duty for an authorised purpose, fail to return thereto without undue delay;
 - (iv) by carelessness or neglect permit a prisoner to escape;
 - (v) fail, when knowing where any offender is to be found, to report or to make due exertion for making him amendable to justice;
 - (vi) fail to report any matter which it is the duty of that officer to report;
 - (vii) fail to report anything that the officer knows concerning a criminal charge, or fail to disclose any evidence which the officer or any person within the knowledge of the officer can give for or against any prisoner or defendant to a criminal charge; or
 - (viii) omit to make any necessary entry in any official document or book;
- (e) *Falsehood or prevarication*: a special constable shall not
- (i) knowingly or through neglect, make any false, misleading or inaccurate oral or written statement or entry in any record or document made, kept or required for police purposes;
 - (ii) either wilfully and without proper authority or through lack of due care, destroy or mutilate any record or document made, kept or required for police purposes;
 - (iii) without good and sufficient cause destroy, mutilate, alter or erase any entry in any record or document; or

- (iv) knowingly or through neglect, make any false, misleading or inaccurate statement in connection with his appointment to the Force of the Barbados Special Constabulary;
- (f) *Improper disclosure of information:* a special constable shall not
- (i) divulge any matter which it is his duty to keep secret;
 - (ii) give notice, directly or indirectly to any person against whom any warrant or summons has been or is about to be issued, except in the lawful execution of such warrant or service of such summons;
 - (iii) without proper authority, communicate to the public, press, or to any unauthorised person, any matter connected with the Force;
 - (iv) without proper authority, show any person outside the Force any book or written or printed document, the property of the Crown;
 - (v) make any anonymous communication to the Cabinet or any member thereof, or to the Administrative, General and Professional Service Commission or any member thereof, or to the Commissioner or to any gazetted officer;
 - (vi) improperly solicit the opinion of any member of the Cabinet with regard to any matter concerning the Force; or
 - (vii) sign or circulate any petition or statement addressed to any person or authority with regard to any matter concerning the Force except through the proper channel for correspondence or in accordance with the Rules of the Police Association;
- (g) *Meeting without authorisation:* a special constable shall not call or attend any unauthorised meeting to discuss any matter concerning the Force;
- (h) *Abuse of authority:* a special constable shall not
- (i) treat any person with whom he may be brought into contact in the execution of his duty in an oppressive manner;

- (ii) without good and sufficient cause conduct a search or require a person to submit to any test or procedure, or make any unlawful or unnecessary arrest;
- (iii) use any unnecessary violence towards any prisoner or any other person with whom the officer may be brought into contact in the execution of his duty, or improperly threaten that person with violence; or
- (iv) be abusive or uncivil to any member of the public;
- (i) *Malingering*: a member of the Force shall not feign or exaggerate any sickness or injury with a view to evading duty;
- (j) *Absence without leave or being late for duty*: a special constable shall not
 - (i) without reasonable excuse be absent without leave from parade, court or any other duty; or
 - (ii) without reasonable excuse, be late for parade, court or any duty;
- (k) *Improper dress or untidiness*: a special constable shall not
 - (i) without reasonable excuse, while on duty or while off duty, but wearing uniform in a public place; or
 - (ii) without reasonable excuse, while wearing civilian clothing in the administration section of any police station, department or building,
 be improperly dressed or be untidy in appearance;
- (l) *Damage to clothing or other articles supplied*: a special constable shall not
 - (i) wilfully or by carelessness, cause any waste, loss or damage to any article of clothing, equipment, book, document or other property supplied by the Government, or issued to, used by or entrusted to the care of that officer; or

- (ii) fail to report as soon as is reasonably practicable, any loss or damage to any such property issued to, or used by him or entrusted to his care;
- (m) *Drunkenness*: a special constable shall not, by being under the influence of drink, render himself unfit for duties which he is or will be required to perform or which he ought reasonably to foresee that he will have to perform;
- (n) *Drinking on duty or soliciting drink*: a special constable shall not
 - (i) without the consent of his superior officer, drink or receive from any other person, any intoxicating liquor while he is on duty; or
 - (ii) demand, or endeavour to persuade any person to give him or to purchase or obtain for him, any intoxicating liquor while on duty;
- (o) *Entering licensed premises*: a special constable shall not, without good and sufficient cause,
 - (i) while on duty; or
 - (ii) while off duty but wearing uniform,enter any premises licensed under the *Liquor Licences Act*, Cap. 182, or any premises where liquor is stored or distributed or any place in respect of which a licence or permit has been granted in pursuance of the law relating to betting and gaming or the law regulating places of entertainment;
- (p) *Lending or borrowing or accepting presents*: a special constable shall not lend money to any special constable who is superior in rank or to any member of the Force or borrow money or accept any present from any special constable who is inferior in rank or from any member of the Force;
- (q) *Criminal conduct*: a special constable shall be regarded as having engaged in criminal conduct if he has been found guilty by a court of law of a criminal offence;

- (r) *Being an accessory to a disciplinary offence:* a special constable shall not connive at, or shall not knowingly be an accessory to any offence against discipline;
- (s) *Neglect of health:* a special constable shall not without good and sufficient cause neglect to carry out any instruction of a police medical officer or other medical practitioner or, while absent from duty on account of sickness, commit any act or adopt any conduct calculated to retard the return of that officer to duty.

Made by the Minister this 4th day of AUGUST, 2020.

Minister responsible for Police Administration and the Preservation of Public
Order

