

L.N. 247 of 2012

CONSTITUTION OF MALTA

Disciplinary Procedure in the Public Service Commission Regulations. (Amendment) Regulations, 2012

IN exercise of the powers conferred by article 121 of the Constitution of Malta, the Public Service Commission has, with the consent of the Prime Minister, made the following regulations:

Citation and
commencement.
L.N. 186 of 1999.

1. (1) The title of these regulations is the Disciplinary Procedure in the Public Service Commission Regulations (Amendment) Regulations, 2012 and they shall be read and construed as one with the Public Service Commission (Disciplinary Procedure) Regulations, 1999, hereinafter referred to as “the principal regulations”.

(2) These regulations shall come into force with immediate effect except Regulations 12 and 14 (d) which shall come into force on 14 September 2012.

Amends regulation
2 of the principal
regulations.

2. Regulation 2 of the principal regulations shall be substituted as follows:

“Interpretation. **2.** In these regulations, unless the context otherwise requires:

“1977 Regulations” means the Public Service Commission (Disciplinary Procedure) Regulations, 1977;

“Attorney General” means the Attorney General appointed under article 91 of the Constitution, or a legal officer authorised by him;

“the Board” means a Disciplinary Board appointed as provided for in regulation 21(3);

“the Commission” means the Public Service Commission as constituted under article 109 of the Constitution;

“the Constitution” means the Constitution of Malta as enacted by the Malta Independence Order, 1964, and as subsequently amended;

“definite suspension” means suspension without pay as a penalty following disciplinary proceedings, and “suspend for a definite period” shall be understood accordingly;

“Executive Secretary” means the Executive Secretary of the Public Service Commission;

“Head of Department” means the head of any department of Government that is listed in the Second Schedule to the Public Administration Act, but for the purpose of these regulations also includes: ^{Cap. 497.}

(a) Permanent Secretaries and Directors General and Directors other than Heads of Department;

(b) any other public officer or authority, not being a Head of Department, to whom power to exercise disciplinary control has been delegated in accordance with article 110 of the Constitution;

and “department of Government” and “department” shall be understood accordingly;

“Head of the Public Service” means the public officer holding or acting in the office of Principal Permanent Secretary in terms of article 14 of the Public Administration Act;

“Permanent Secretary” means a public officer appointed as Permanent Secretary in terms of article 92(3) of the Constitution;

“public officer” or “officer” means a public officer as defined by article 124(1) of the Constitution;

“public service” or “service” means the public service as defined by article 124 of the Constitution;

“salary” means basic salary or, as the case may require, basic wage;

L.N. 205 of 2004.

“Schengen area” means the states which are parties to the Schengen Agreement, as defined in regulation 2 of the Immigration Regulations, 2004;

“Standing Disciplinary Panel” means a panel established in terms of regulation 21(1);

“summary suspension” means suspension on half salary by the Head of Department as an interim measure in terms of regulation 11(1), 12(3) or 14(3), and “summarily suspend” shall be understood accordingly;

“temporary suspension” means suspension on not less than half salary by the Commission in terms of regulation 12 or 14 pending the conclusion of disciplinary or criminal proceedings, and “temporarily suspend” shall be understood accordingly.

Amends regulation 3 of the principal regulations.

3. Sub-regulation (5) of regulation 3 of the principal regulations shall be substituted by the following:

“(5) Nothing in these regulations shall prevent the Commission, with the consent of the Prime Minister, from issuing directives and guidelines to Permanent Secretaries, Heads of Department and other officers concerning the interpretation and operation of these regulations and the exercise of any functions assigned to them by or under these regulations or delegated to them under article 110 of the Constitution.”.

Amends regulation 6 of the principal regulations.

4. Immediately after sub-regulation (3) of regulation 6 of the principal regulations, there shall be added the following new sub-regulation:

“(4) (a) Where an officer answering disciplinary charges is entitled to be notified of any matter or given any information under these regulations, such entitlement shall, unless these regulations prescribe otherwise, be held to have been discharged if the notification is delivered to the address most recently reported by the officer to his department as his home address, and if proof of delivery is retained.

(b) Nothing in the foregoing shall be taken as precluding the discharge of the said entitlement through the delivery of the notification or information directly to

the officer answering charges, provided that proof of such delivery is retained.”.

5. Regulation 8 of the principal regulations shall be amended as follows:

Amends regulation 8 of the principal regulations.

(a) for the marginal note thereto, there shall be substituted the words “Proceedings by the Head of the Public Service and by Permanent Secretaries.”;

(b) in sub-regulation (1), the words “or a Director” shall be substituted by the words “or a Director General or Director”; and

(c) in sub-regulation (2), the words “Head of the Public Service” shall, wherever they appear, be substituted by the words “Permanent Secretary of the relevant Ministry”.

6. For the title of Part I of the principal regulations, including in the Arrangement of Regulations, there shall be substituted the following:

Amends the title of Part I of the principal regulations.

“Part I – Summary and Temporary Suspension”.

7. Regulation 11 of the principal regulations shall be amended as follows:

Amends regulation 11 of the principal regulations.

(a) the word “suspension” shall, wherever it occurs, be substituted by the words “summary suspension”;

(b) the word “suspended” shall, wherever it occurs, be substituted by the words “summarily suspended”; and

(c) in sub-regulation (2), the words “in terms of the preceding paragraph of this regulation” shall be substituted by the words “in terms of sub-regulation (1)”.

8. Regulation 12 of the principal regulations shall be amended as follows:

Amends regulation 12 of the principal regulations.

(a) for the marginal note thereto, there shall be substituted the words “Summary and temporary suspension during disciplinary proceedings.”;

(b) the words “suspend” and “suspension” shall,

wherever they occur, be respectively substituted by the words “summarily suspend” and “summary suspension”;

(c) the words “interdicted” and “interdiction” shall, wherever they occur, be respectively substituted by the words “temporarily suspended” and “temporary suspension”; and

(d) sub-regulation (10) shall be substituted as follows:

“(10) An officer who is temporarily suspended due to criminal proceedings instituted against him shall seek the permission of the Permanent Secretary of the relevant Ministry if he wishes to travel outside the Schengen area. Prior to granting such permission the Permanent Secretary of the relevant Ministry shall consult the Commissioner of Police. Any such officer who leaves Malta without the required permission shall be liable to disciplinary action, which action may be one leading to dismissal.”.

Amends regulation
14 of the principal
regulations.

9. Regulation 14 of the principal regulations shall be amended as follows:

(a) for sub-regulation (1) thereof, there shall be substituted the following:

“(1) When it comes to the notice of the Head of Department that an officer under his charge is being investigated or has been arrested by the police in connection with a criminal investigation, the Head of Department may direct the officer to avail himself of vacation leave for a single period up to a maximum of five working days, and the officer shall comply.”;

(b) sub-regulations (2), (3) and (4) shall be renumbered as sub-regulations (4), (5) and (6) respectively;

(c) immediately after sub-regulation (1) thereof, there shall be added the following new sub-regulations:

“(2) A public officer availing himself of vacation leave for a period up to a maximum of five working days in accordance with sub-regulation (1) hereof shall have the right to report back to work immediately on the expiry of the said period of vacation

leave. If the investigation carried out by the police does not result in the arraignment of the public officer, the officer's vacation leave entitlement for that year shall be augmented by the equivalent of the leave taken in accordance with sub-regulation (1) hereof.

(3) If criminal proceedings are instituted against a public officer in any court, the officer shall so inform his Head of Department within three working days from the date of the commencement of such proceedings. The Commissioner of Police shall also report to the Head of Department that criminal proceedings are being instituted against the said public officer:

Provided that neither the officer nor the Commissioner of Police shall be obliged to inform the Head of Department about criminal proceedings instituted solely in connection with a contravention, unless that contravention is alleged to have occurred at the officer's place of work or is related to his duties.”;

(d) in sub-regulation (4) as renumbered, for the words “should or should not be interdicted” there shall be substituted the words “should or should not be temporarily suspended”, and immediately after the words “determination of any appeal” there shall be added the words “The report referred to the Commission by the Head of Department shall be copied to the officer undergoing criminal proceedings.”;

(e) in sub-regulation (5) as renumbered, for the words “Where the Head of Department has recommended to the Commission that the officer should be interdicted, he may suspend the officer” there shall be substituted the words “Where the Head of Department has recommended to the Commission that the officer should be temporarily suspended, he may summarily suspend the officer”; and

(f) in sub-regulation (6) as renumbered, for the words “suspension and interdiction” there shall be substituted the words “summary and temporary suspension”.

Amends regulation 16 of the principal regulations.

10. In the proviso to sub-regulation (2) of regulation 16 of the principal regulations, the words “suspension or interdiction” shall be substituted by the words “summary or temporary suspension”.

Amends regulation 20 of the principal regulations.

11. Sub-regulation (2) of regulation 20 of the principal regulations shall be amended as follows:

(a) in the Maltese text of paragraph (a) thereof, for the words “il-partikolaritajiet tax-xhieda li jkunu ser jingiebu b’sostenn ta’ l-akkuża jew l-akkużi” there shall be substituted the words “il-partikolaritajiet tal-evidenza li ssostni l-akkuża jew l-akkużi” and for the words “three calendar months” there shall be substituted the words “90 working days”;

(b) in paragraph (b) thereof, for the words “This statement shall be delivered personally to the officer by a responsible official of the department concerned” there shall be substituted the words “This statement shall be delivered in accordance with sub-regulation (4) of regulation 6 of these regulations”;

(c) in paragraph (c) thereof, for the words “A complete report on the case shall be entered in the officer’s personal file but not in his record of service.” there shall be substituted the words “All the documents related to the case shall be destroyed after two months.”; and

(d) for paragraph (e) thereof there shall be substituted the following:

“(e) If the officer does not furnish a reply within the period specified, or does not in the opinion of the Head of Department exculpate himself, the Head of Department shall so inform the officer. Within twenty working days from the receipt of a reply or from the date on which such a reply was due, the Head of Department shall refer the case to a Disciplinary Board appointed under regulation 21 of these regulations.”.

Substitutes regulation 21 of the principal regulations.

12. Regulation 21 of the principal regulations shall be substituted by the following:

“Standing
Disciplinary
Panels and
Disciplinary
Boards.

21. (1) The Permanent Secretary of each Ministry shall, subject to the approval of the

Commission, establish a Standing Disciplinary Panel consisting of suitable and competent former public officers.

(2) Members of the Standing Disciplinary Panel of a ministry shall serve thereon for a period of 24 months with the possibility of renewal, subject to the Commission's approval, for further terms of twelve months:

Provided that any previous or concurrent service with the Standing Disciplinary Panel of a particular ministry shall not be taken into consideration for the purpose of this sub-regulation in the event that a person is nominated to the Standing Disciplinary Panel of another ministry;

Provided further that a member of the Panel of any ministry may be removed by the Commission, at its discretion, at any time.

(3) A Disciplinary Board for the purpose of regulation 20(2)(e) shall be appointed by the Head of Department from amongst suitable and competent public officers, and, or persons listed in the Standing Disciplinary Panel of the relevant Ministry:

Provided that if a serving public officer is appointed to a Disciplinary Board, he shall be an officer of the department and not in the same grade as the officer charged, and moreover:

(a) if appointed to chair the Board, the officer shall be not less than two salary scales above the officer charged and not below salary scale 10; or

(b) if appointed as a member of the Board, the officer shall be at least one salary scale above the officer charged:

Provided further that where the Head of Department has informed the officer that the alleged offence could lead to dismissal, the chairperson of the Disciplinary Board shall, if a public officer, be at least at Assistant Director level or analogous grade.

(4) The Chairperson and Members serving on the Board shall not be connected with the case of discipline and they shall not be related up to the third degree to the officer charged. Where any member of the Board is connected with the case of discipline, he shall accordingly inform the Head of Department, who shall nominate a substitute in keeping with sub-regulation (3) hereof.

(5) Where serious objections are raised by the officer charged or by his representative that the Chairperson and, or any of the Members of the Board are in some way prejudiced against him, the officer charged may accordingly petition the Permanent Secretary of the relevant Ministry. Pending the decision of the Permanent Secretary of the relevant Ministry, the disciplinary proceedings shall be suspended.

(6) If the Permanent Secretary accepts a petition under sub-regulation (5) hereof, he shall direct the Head of Department to appoint a fresh Board or make appropriate changes to the Board in keeping with sub-regulation (3) hereof. The petitioning officer shall be informed accordingly.”.

Amends regulation
23 of the principal
regulations.

13. For sub-regulation (2) of regulation 23 of the principal regulations there shall be substituted the following:

“(2) Notice of not less than ten working days shall be given of the time and place of the hearing to the Head of Department and to the officer charged. Every notice shall be signed by the chairperson and delivered in accordance with sub-regulation (4) of regulation 6 of these regulations.”.

Amends regulation
32 of the principal
regulations.

14. In sub-regulation (4) of regulation 32 of the principal regulations, for paragraphs (c) and (d) there shall be substituted the following:

“(c) annul the findings of the Board and direct the Permanent Secretary supervising the department to appoint a fresh Board in keeping with regulation 21(3) to hear the case again and report its findings to the Head of Department;

(d) remove any defaulting members of the original Board from the Standing Disciplinary Panel in accordance

with regulation 21(2), and in the case of public officers recommend disciplinary action against them in accordance with regulation 3(4).”.

15. Regulation 37 of the principal regulations shall be substituted as follows:

Substitutes regulation 37 of the principal regulations.

“Procedure followed when officer leaves the service while disciplinary proceedings are still pending.

37. (1) When an officer who is facing disciplinary proceedings resigns or retires from the public service or otherwise ceases to be a public officer before such proceedings are concluded, the Head of Department shall ask the officer charged to state, within ten working days, whether he wishes that the disciplinary proceedings be continued in order that he may have the opportunity to exculpate himself, or whether he wishes that the disciplinary proceedings be suspended.

(2) If the officer opts to continue with the proceedings and he is eventually found guilty, no penalty shall be imposed, but a record of the findings of the Disciplinary Board shall be entered in the officer’s record of service.

(3) If the officer opts to have the case suspended, he shall confirm this in writing and a record shall be entered in his record of service stating that at the time of his leaving the service, the officer had a pending disciplinary case.

(4) If the officer does not, within the stipulated time, state what his preferred option is, the case shall be suspended and a note entered in his record of service stating that at the time of his leaving the service, the officer had a pending disciplinary case.

(5) Should a person who had been found guilty in accordance with sub-regulation (2) rejoin the public service, whether in the same or in a different capacity, the Head of Department now responsible for the officer shall, within six months of the officer rejoining the service, make a recommendation to the Commission as to whether or not disciplinary proceedings should be resumed with a view to the imposition of the appropriate disciplinary penalty; and if the Commission directs that proceedings should be resumed, the Head of Department

shall proceed in accordance with regulation 26 or such other provision of these regulations as may apply.

(6) Should a person who has a suspended disciplinary case in terms of sub-regulations (3) or (4) subsequently rejoin the service, whether in the same or a different capacity, the Head of Department now responsible for the officer shall, within six months of the officer rejoining the service, make a recommendation to the Commission as to whether or not disciplinary proceedings should be resumed; and if the Commission so directs, the Head of Department shall resume proceedings from the stage they had reached prior to their being discontinued, save that –

(a) any applicable timeframes shall be deemed to start from the date that the Head of Department is informed by the Commission that proceedings should be resumed, or any later date as may apply; and

(b) unless the Disciplinary Board had presented its report in the original proceedings, the Head of Department shall appoint the same or a fresh Disciplinary Board to hear the case according to the charges laid against the officer in the original proceedings.”.

Substitutes regulation
43 of the principal
regulations.

16. Regulation 43 of the principal regulations shall be substituted by the following:

“Saving.

43. Where disciplinary proceedings or petitions for a review of a past recommendation of the Commission have been commenced under and in accordance with the 1977 Regulations, repealed under these regulations, such proceedings or review shall be continued and completed under and in accordance with the regulations aforesaid as if the 1977 Regulations had not been repealed:

Provided that the provisions on disciplinary penalties which shall apply in the case of such proceedings or review shall be whichever of those in the 1977 Regulations or the current regulations are most favourable to the accused officer.”.

17. The Schedule of Offences and Penalties to the principal regulations shall be amended as follows:

Amends the Schedule to the principal regulations.

(a) in paragraph 2, for the words “in this Schedule.” there shall be substituted the words “in this Schedule:” and immediately thereafter there shall be added the following new proviso:

“Provided that where a directive issued under the Public Administration Act specifies that breaches of the said directive are to be considered as a serious offence, the Head of Department shall be precluded from exercising the aforementioned discretion and shall regard any such breach of the said directive as a serious offence.”.

(b) Sub-paragraph (r) of paragraph 3.2 shall be renumbered as sub-paragraph (s), and immediately after paragraph (q) there shall be added the following new paragraph:

“(r) disregard of or failure to obey with regards to directives issued under Public Administration Act.”.

(c) immediately following paragraph 3.2, there shall be added a new paragraph 3.3 as follows:

“3.3 Where a single or continuous act can be classified under both paragraphs 3.1 and 3.2, such offence shall be classified under paragraph 3.2.”;

(d) in paragraphs 4.1(b) and (c), for the words “Suspension without pay” there shall be substituted the words “Suspension without pay for a definite period”;

(e) in paragraphs 4.1(b) and (c) and 4.2 (a) and (b), as well as the first proviso to paragraph 4.2(c), for the word “days”, wherever it appears, there shall be substituted the words “working days”;

(f) in paragraphs 4.2(a) and (b), for the words “Suspension without pay for a period” there shall be substituted the words “Suspension without pay for a definite period”;

(g) in the first proviso to paragraph 4.2, for the words “suspension without pay not exceeding five days” there shall be substituted the words “suspension without pay for a definite period not exceeding five days”;

(h) in the second proviso to paragraph 4.2, for the word “interdicted” there shall be substituted the words “temporarily suspended”; and

(i) in the third proviso to paragraph 4.2, for the words “of this Schedule.” there shall be substituted the words “of this Schedule:”, and immediately thereafter there shall be added following new proviso:

“Provided also that where the Commission recommends the imposition of a warning of dismissal, the Commission may also, at its discretion, recommend that the said warning should expire at the end of a period specified by the Commission.”.

