

Assented to in Her Majesty's name and on Her Majesty's behalf this day of , 2014.

Mark Capes
Governor



**ST.HELENA
NO. OF 2014**

Enacted.....
Date of Commencement.....
Published in the Gazette.....

A BILL

FOR

AN ORDINANCE

to amend the Police Force Ordinance, Cap. 132, so as to review the provisions relating to the Police Service; and for purposes connected therewith or incidental thereto.

Enacted by the Governor of St. Helena with the advice and consent of the Legislative Council of St. Helena.

Citation and interpretation

- 1.** (1) This Ordinance may be cited as the Police Service (Amendment) Ordinance, 2014.
- (2) In this Ordinance, the “principal Ordinance” means the Police Force Ordinance, Cap. 132.

Long and Short title

- 2.** (1) The Long title of the principal Ordinance is amended by deleting the word “Force” and substituting the word “Service” therefor.
- (2) Section 1 of the principal Ordinance, other than the heading, is repealed and the following is substituted therefor:
 - “1.** This Ordinance may be cited as the Police Service Ordinance.”.

Police Service

3. The principal Ordinance is amended by deleting the references to the “Police Force” and “Force” wherever they occur (other than in section 1, the definition of “Force” in section 2 and the Forms in the Schedule), and substituting “Service” therefor.

Definitions

4. Section 2 of the principal Ordinance is amended—
- (a) by repealing the definitions of “Force” and “Gazetted Police Officer”;
 - (b) by deleting the characters and words “, male or female,” in the definition of “police officer”;
 - (c) by adding the following definitions after the definition of “public place”:
 - “**Senior Police Officer**” means any police officer of and above the rank of Chief Inspector;
 - “**Service**” means the St Helena Police Service for which provision is made in this Ordinance.”;
 - (d) by renumbering the existing text as subsection (1) and adding the following subsection:
 - “(2) Any reference to Assistant Superintendent or above in any St Helena or Ascension Island Ordinance should be construed as a reference to Senior Police Officer.”.

Appointment of Chief of Police

5. Section 5 of the principal Ordinance is amended by deleting the words “and superintendence”.

Appointment of Acting Chief of Police

6. Section 6 of the principal Ordinance is repealed and the following is substituted therefor:

“Appointment of Acting Chief of Police

6. The Governor may appoint a member of the Service as the Acting Chief of Police as required and to have the same powers as the Chief of Police when performing that function.”.

Power to delegate authority

7. Section 7 of the principal Ordinance is amended by repealing subsection (2).

Requisites for appointment

8. Section 9 of the principal Ordinance, other than the heading is repealed and the following is substituted therefor:

- “9. A person shall not be appointed to the Service unless he is of good character and—
- (a) in the case of police cadets, is above the age of 16 years; or
 - (b) in the case of all other officers, is above the age of 18 years.”.

Probation and term of service

9. Section 10 of the principal Ordinance is amended by deleting the words “Gazetted Police Officer” in subsection (4) and substituting the words “Senior Police Officer” therefor.

Discharge or dismissal from Service

10. Section 11 of the principal Ordinance is amended by deleting the words “Gazetted Officer” and substituting “Senior Police Officer” therefor.

Motor vehicles

11. Section 20 of the principal Ordinance is amended by repealing the heading and substituting the following therefor:

“Motor vehicle for use by Service”.

Neglect by special constables

12. Section 24 of the principal Ordinance is repealed.

Duties of Service

13. Section 26(1) of the principal Ordinance is amended—

- (a) by deleting the words “and bring before a Justice” in paragraph (b);
- (b) by repealing paragraphs (c) and (e);
- (c) by inserting the words “under relevant legislation and” after the words “shall be carried out” in the first line of the proviso.

Power of searching persons on or about ships or aircraft

14. Section 28(2) of the principal Ordinance is amended by deleting the words from “shall be guilty” up to the end of that subsection and substituting “is guilty of an offence for which the maximum penalty on conviction is a fine of £500 or imprisonment for a term of six months” therefor.

Detention centres

15. Section 29 of the principal Ordinance is amended—

- (a) by repealing the heading and substituting the following therefor:
“Chief of Police may designate detention centres”;
- (b) by deleting the words “lock-up house” in subsection (1) and substituting “detention centre” therefore.

Proof of service of process

16. Section 32 of the principal Ordinance is amended by deleting the words “shall be guilty of an offence” up to the end of that section and substituting “is guilty of an offence for which the maximum penalty on conviction is a fine of £500 or imprisonment for a term of six months” therefor.

Dispersal of assembly and offences relating thereto

17. Section 33 of the principal Ordinance is repealed.

Power to prevent congestion in public place

18. Section 34 of the principal Ordinance is amended by deleting the words “shall be guilty of an offence” up to the end of that section and substituting “is guilty of an offence for which the maximum penalty on conviction is a fine of £250 or imprisonment for a term of one month” therefor.

Power to control traffic

19. Section 35 of the principal Ordinance is amended by deleting the words “shall be guilty of an offence” up to the end of that section and substituting “is guilty of an offence for which the maximum penalty on conviction is a fine of £250 or imprisonment for a term of one month” therefor.

Power to regulate traffic

20. Section 36(2) of the principal Ordinance is amended by deleting the words “shall be guilty of an offence” up to the end of that subsection and substituting “is guilty of an offence for which the maximum penalty on conviction is a fine of £250 or imprisonment for a term of one month” therefor.

Assaulting police officer, obstruction, etc.

21. Section 37 of the principal Ordinance, other than the heading, is repealed and the following is substituted therefor:

“37. Any person who—

- (a) assaults, obstructs or resists any police officer acting in the execution of his duty, or aids or incites any person so to assault, obstruct or resist; or
- (b) 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,

is guilty of an offence for which the maximum penalty on conviction is a fine of £500 or imprisonment for a term of six months.”.

Effect of other law

22. Section 41 of the principal Ordinance is repealed.

Amendment of Part VI

23. The heading of Part VI is repealed and the following is substituted therefor:
“**Recording, Management and Investigation of Complaints against Police Officers**”;

Inciting rioting

24. Section 42 of the principal Ordinance is repealed.

Police officer to obey lawful orders

25. Section 43 of the principal Ordinance is amended by deleting the word “superior” and substituting the word “senior” therefor.

Complaints register

26. The following section is inserted after section 43 of the principal Ordinance:

“Complaints register

43A. All complaints against Police Officers shall be recorded in the Police Service Complaints Register.”.

Disciplinary proceedings for non-Senior Officers

27. Section 44 of the principal Ordinance is repealed and the following is substituted therefor:

“Hearing and determination of charge or complaint in disciplinary proceedings

44. (1) When any member of the Service, other than a Senior Police Officer, is charged with a breach of any disciplinary regulations made under this Ordinance, any Senior Police Officer may hear and determine the charge or complaint and may, if he finds such member of the Service guilty, impose any one of the sentences referred to in subsection (4).

(2) When any Senior Officer, other than the Chief of Police, within the Service is charged with a breach of any disciplinary regulations made under this Ordinance, the Chief of Police and Director of Human Resources may hear and determine the charge or complaint and may, if they find such member of the Service guilty, impose any one of the sentences referred to in subsection (4).

(3) Where the Chief of Police is charged with a breach of any disciplinary regulations made under this Ordinance, it will be the decision of the Governor as to who will hear and determine the charge or complaint and those person(s) (hereafter known as the ‘Panel’) may, if they find the Chief of Police guilty, impose any one of the sentences referred to in subsection (4)

(4) The sentences which may be imposed under subsections (1), (2) and (3) are the following:

- (a)* Formal verbal warning (stage one) in section 44A;
- (b)* Written warning (stage two) in section 44B;
- (c)* Final written warning (Stage Three) in section 44C;
- (d)* Dismissal with notice in section 44D;
- (e)* Dismissal without notice in section 44E;

Provided that any punishment imposed under paragraphs *(c)*, *(d)* and *(e)* shall not become effective until confirmed by the Governor.

(5) Any sanction provided under subsection (4)*(b)* or *(c)* can be accompanied by a recommendation to the Governor for a reduction in rank for the Officer concerned.

(6) For the purposes of this Part of the Ordinance, a Senior Police Officer, the Chief of Police and the Panel referred to in subsection (3), shall have the same powers in respect of securing and compelling the attendance of witnesses and their examination upon oath and otherwise as are conferred upon a Justice of the Peace under the Magistrates’ Court Ordinance.”.

Ancillary disciplinary proceedings

28. The following sections are inserted in the principal Ordinance after section 44:

“Verbal Warning (Stage One)

44A. (1) For minor offences, a formal verbal warning will be issued, making clear that it constitutes the first step of the disciplinary procedure and that further misconduct may result in more serious consequences.

(2) A copy of the verbal warning will be placed in the employee’s personal file and remains valid for six months (after which it should be disregarded for disciplinary purposes, subject to satisfactory conduct).

Written Warning (Stage Two)

44B. (1) For a more serious offence, or where a lesser or minor offence follows a formal verbal warning that has been issued and remains valid, a written warning will be issued and the written warning shall state that a final written warning may be considered if there are further acts of misconduct when the written warning is valid.

(2) A copy of the written warning will be placed in the officer’s personal file and remains valid for 12 months (after which it should be disregarded for disciplinary purposes, subject to satisfactory conduct).

Final Written Warning (Stage Three)

44C. (1) For a serious offence, or where an offence follows a written warning that remains valid, a final written warning will be issued and the written warning shall state that further acts of misconduct during the period when a final written warning is valid, may lead to dismissal.

(2) A copy of the final written warning will be placed in the officer’s personal file and will remain valid for 18 months (after which it should be disregarded for disciplinary purposes, subject to satisfactory conduct).

Dismissal with Notice

44D. (1) For acts of further misconduct, other than gross misconduct, by an officer under a final written warning, dismissal is the final step that will be taken if, despite warnings, conduct does not improve.

(2) An officer will, in such circumstances, be notified of the date on which his employment will terminate, and the appropriate notice period.

(3) The decision to dismiss will be confirmed in writing within five working days of the disciplinary hearing by the person conducting the disciplinary hearing under section 44.

Dismissal without Notice

44E. (1) For offences deemed to be gross misconduct an officer will have his employment terminated with immediate effect (subject to confirmation by the Governor) and will not receive pay in lieu of notice:

Provided that he will be entitled to pay for any leave entitlement earned but not taken within the current holiday year and any other outstanding monies due to him.

(2) The decision to dismiss will be confirmed in writing within five working days of the disciplinary hearing by the person conducting the disciplinary hearing under section 44.

Referral of complaint

44F. (1) Where the member of the Service referred to in section 44(1) is found guilty of a charge or complaint which is heard by a Senior Police Officer other than the Chief of Police, the record of the proceedings shall be sent to the Chief of Police, who may, after giving the officer or cadet the opportunity of being heard—

- (a) return the proceedings for the taking of further evidence; or
- (b) quash the proceedings and re-hear the charge or complaint himself and on such re-hearing he may take further evidence; or
- (c) reverse or vary the findings; or
- (d) confirm the punishment if such punishment is that under section 44(4)(a) or (b); or
- (e) where the punishment is that under section 44(4), (c) (d) or (e), recommend to the Governor that the punishment be confirmed.

(2) Where a Senior Officer referred to in section 44(2) is found guilty of a charge or complaint which is heard by the Chief of Police, the record of the proceedings shall be sent to the Governor, who may, after giving the Senior Officer the opportunity of being heard—

- (a) return the proceedings for the taking of further evidence; or
- (b) quash the proceedings and re-hear the charge or complaint himself and on such re-hearing he may take further evidence; or
- (c) reverse or vary the findings; or
- (d) confirm the punishment.”.

Appeal to Governor

29. Section 45 of the principal Ordinance is amended—

- (a) by repealing subsections (1) and (2) and substituting the following therefor:

“(1) Where any member of the Service is dissatisfied with a decision given by the Chief of Police, he may, within 14 days after such decision has been communicated to him, appeal to the Governor.

(2) Where any member of the Service is dissatisfied with the decision of a Senior Police Officer other than the Chief of Police, he may within 14 days after such decision has been communicated to him appeal to the Chief of Police; and if he is dissatisfied with the decision of the Chief of Police he may appeal to the Governor within 14 days after the decision of the Chief of Police has been communicated to him.”;

- (b) by inserting the following subsection after subsection (2):

“(2A) Where the Chief of Police is dissatisfied with a decision given by the Panel under section 44(3), he may, within 14 days after such decision has been communicated to him, appeal to the Governor.”;

- (c) by deleting the paragraph (c) in subsection (3) and substituting the following therefor:

“(c) vary the punishment by substituting some other punishment which the relevant Officer or Panel might have imposed.”.

- (d) by deleting subsection (4) and substituting the following therefor:

“(4) All punishment by the relevant Officer or Panel under section 44, shall within seven days after such decision be communicated to the Governor for consideration of the punishment.”.

Collection of fines

- 30.** Section 46 of the principal Ordinance is repealed.

Suspension from duty

- 31.** Section 47 of the principal Ordinance is repealed and the following is substituted therefor:

“Suspension from Duty

47. (1) If in any case the Chief of Police considers that the public interest requires that any member of the Police Service should cease to exercise the functions of his office immediately, he may suspend such member from duty, provided that disciplinary or criminal proceedings are being instituted or are about to be instituted against such member.

(2) In any case where the Chief of Police is subject to disciplinary or criminal proceedings and the Governor considers that the public interest requires that the Chief of Police should cease to exercise the functions of his office immediately, he may suspend him from duty, provided that disciplinary or criminal proceedings are being instituted or are about to be instituted against him.

(3) A member or Chief of Police who has been suspended under this section shall receive full pay.”.

Members of Service to return arms and equipment

- 32.** Section 48 of the principal Ordinance is amended by deleting the words “shall be liable on summary conviction to a fine not exceeding £25 or to imprisonment not exceeding three months” and substituting “is guilty of an offence for which the maximum penalty on conviction is a fine of £250 or imprisonment for a term of three months” therefor.

Power to make Regulations

- 33.** Section 49 of the principal Ordinance is amended by repealing subsection (2).

Rewards and gratuities

- 34.** Section 51 of the principal Ordinance is repealed.

Powers of Chief of Police to make standing orders

- 35.** Section 52 of the principal Ordinance is amended by repealing paragraph (g) and substituting the following therefor:

“(g) the management and government of police offices and other estate;”.

Power to take finger-prints, photographs, etc.

- 36.** Section 53 of the principal Ordinance, other than the heading, is repealed and the following is substituted therefor:

“**53.** It shall be lawful for any member of the Force to take the photograph and fingerprints—

- (a) of any person who has been arrested under the powers conferred by this or any other law; and
- (b) in addition to fingerprints and photographs, the DNA sample of any person who has been convicted of any offence:

Provided that, if any such person who has not previously been convicted of any offence shall have been photographed, or whose fingerprints or DNA sample has been taken, be acquitted upon his trial or the charge against him be withdrawn, all photographs (both negatives and copies), fingerprint impressions and DNA samples so taken shall be forthwith destroyed or handed over to such person.”.

Causing disaffection among members of Service

37. Section 56 of the principal Ordinance is amended by deleting the words from “shall be guilty of an offence” to the end of that section and substituting “is guilty of an offence for which the maximum penalty on conviction is a fine of £2,000 or imprisonment for a term of two years.” therefor.

Offence of making false report of commission of offence, etc

38. Section 57 of the principal Ordinance is amended by deleting the words from “shall be guilty of an offence” to the end of that section and substituting “is guilty of an offence for which the maximum penalty on conviction is a fine of £500 or imprisonment for a term of six months.” therefor.

Impersonation etc

39. Section 58 of the principal Ordinance is repealed.

Schedule

- 40.** The Schedule to the principal Ordinance is amended—
- (a) by deleting the words “Police Force” in Form I and substituting “Police Service” therefor;
 - (b) by deleting the reference to “Police Force Ordinance” in Forms II and III and substituting “Police Service Ordinance” therefor.

EXPLANATORY NOTE

(This note does not form part of the Ordinance)

This Ordinance amends the Police Force Ordinance, Cap. 132, to review the provisions relating to the Police Service.