

1970/89



**THE FIRE SERVICES (PERMANENT BRIGADESMEN)
REGULATIONS 1970**

RICHARD WILD, Administrator of the Government
ORDER IN COUNCIL

At the Government House at Wellington this 11th day of May 1970

Present:

HIS EXCELLENCY THE ADMINISTRATOR OF THE GOVERNMENT IN COUNCIL

PURSUANT to the Fire Services Amendment Act 1969, His Excellency the Administrator of the Government, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

ANALYSIS

<p>1. Title and commencement</p> <p>2. Interpretation</p> <p style="text-align: center;">PART I—CONDITIONS OF SERVICE</p> <p>3. Firemen to serve at station specified by Chief Fire Officer</p> <p>4. Firemen to undergo medical examination</p> <p>5. Retiring age</p> <p>6. Firemen to receive certain documents on enlistment</p>	<p style="text-align: center;">PART II—PROCEDURE IN DEALING WITH ALLEGATIONS OF MISCONDUCT</p> <p>7. Procedure for dealing with allegations made under section 4 of the Act</p> <p>8. Procedure in respect of appeals under section 8 of the Act</p> <p>9. Procedure for dealing with allegations made under section 9 of the Act</p> <p>10. Witnesses and taking of evidence</p> <p>11. Protection of presiding officer and urban fire authority when inquiring into allegations, etc.</p>
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REGULATIONS

1. Title and commencement—(1) These regulations may be cited as the Fire Services (Permanent Brigadesmen) Regulations 1970.

(2) These regulations shall come into force on the fourteenth day after the date of their notification in the *Gazette*.

2. Interpretation—In these regulations, unless the context otherwise requires,—

“The Act” means the Fire Services Amendment Act 1969:

“Presiding Officer”, in relation to proceedings under section 4 of the Act, means the Chief Fire Officer or other fire officer presiding over the proceedings pursuant to section 5 of the Act.

PART I—CONDITIONS OF SERVICE

3. Firemen to serve at station specified by Chief Fire Officer—Every fireman employed by an urban fire authority shall serve and carry out his duties at such of the authority’s fire stations as the Chief Fire Officer of the authority determines from time to time.

4. Firemen to undergo medical examination—(1) For the purpose of ensuring that firemen are medically fit to perform their duties, where any fireman employed by an urban fire authority reaches 45 years of age, the Chief Fire Officer of that authority shall require him to undergo a medical examination by a medical practitioner appointed by the authority as soon as practicable thereafter, and as soon as practicable after the expiration of each subsequent period of 3 years computed from the fireman’s forty-fifth birthday until he retires or his services as a fireman are otherwise terminated.

(2) For the purpose of ensuring that Chief Fire Officers and Deputy Chief Fire Officers are medically fit to perform their duties, where any Chief or Deputy Chief Fire Officer reaches 45 years of age, the authority employing him shall require him to undergo a medical examination by a medical practitioner appointed by it as soon as practicable thereafter, and as soon as practicable after the expiration of each subsequent period of 3 years computed from his forty-fifth birthday until he retires or his services are otherwise terminated.

(3) Every such medical examination shall be carried out at the expense of the authority by whom the Chief Fire Officer, Deputy Chief Fire Officer, or fireman, as the case may be, is employed.

(4) Where as a result of any such medical examination a fireman or a Chief or Deputy Chief Fire Officer is declared to be medically unfit, his services may be terminated under section 6 or under section 11 of the Act, as the case may be.

(5) If the services of any such fireman or officer are terminated or proposed to be terminated as aforesaid he shall be entitled to a further medical examination by a medical practitioner nominated by the fireman or officer concerned at the expense of the authority.

(6) In the event of there being a conflict of opinion between the two medical practitioners, the authority shall, at its expense, appoint a medical referee acceptable to the examining practitioners to determine whether or not the fireman or officer is medically fit to carry out his duties.

(7) For the purposes of this regulation, the reports of the examining practitioners shall be made available to any medical referee appointed under subclause (6) of this regulation.

(8) Any such referee may, if he thinks necessary, conduct a further medical examination of the fireman or officer, as the case may be.

5. Retiring age—(1) Every Chief Fire Officer, Deputy Chief Fire Officer, and fireman shall retire on his reaching 60 years of age.

(2) Nothing in this regulation shall prevent an urban fire authority from re-engaging or continuing to employ any such person in a capacity other than that of Chief Fire Officer, Deputy Chief Fire Officer, or fireman.

6. Firemen to receive certain documents on enlistment—The Chief Fire Officer of an urban fire authority shall provide every person entering the service of that authority as a fireman with a copy of the code of good conduct prescribed in section 3 of the Act and the standing orders (if any) of the brigade of which he is to be a member.

PART II—PROCEDURE IN DEALING WITH ALLEGATIONS OF MISCONDUCT

7. Procedure for dealing with allegations made under section 4 of the Act—(1) Where any allegations have been made against a fireman under section 4 of the Act, and an inquiry is to be held into the allegations in accordance with that section, then the following provisions shall apply:

- (a) The breach or breaches of good conduct alleged to have been committed by the fireman shall be set out in a charge sheet prepared by an officer (in these regulations referred to as the presenting officer) of the brigade of which the fireman is a member:
 - (b) The presenting officer shall cause a copy of the charge sheet to be served on the fireman at least 24 hours before the inquiry commences:
 - (c) Where a charge sheet contains more than one alleged breach of the code of good conduct, each such breach shall be set out in numbered paragraphs and shall be stated clearly and without duplication or uncertainty:
 - (d) Where the same breach is alleged to have been committed by a fireman on different occasions, the presenting officer shall prepare separate charge sheets in respect of each occasion:
 - (e) Where the same facts give rise to two or more alleged breaches, the presenting officer shall cause each such alleged breach to be charged separately, but nothing in this paragraph shall prohibit all of the alleged breaches from being charged in the same charge sheet.
- (2) Every inquiry held under section 4 of the Act, shall, subject to that section, proceed in accordance with the following procedure:
- (a) The presiding officer shall read out aloud the charge sheet containing the allegations against the fireman, and shall then ask the fireman (if present) whether or not he admits or denies the allegations. Any answer given by the fireman shall be recorded by the presiding officer. If no answer is given, the fireman shall be deemed to have denied the allegations:
 - (b) If the fireman concerned admits any alleged breach, no evidence (except as provided in subclause (3) of this regulation) shall be heard in respect of it, but if there are other alleged breaches which have not been admitted, the presiding officer shall

postpone consideration of the action to be taken in respect of the admitted breach until the inquiry in respect of the alleged breaches which have not been admitted has been completed:

- (c) If the fireman concerned refuses to state whether or not he admits or denies any allegation against him, the inquiry shall proceed as if he had denied it:
- (d) The presenting officer shall then briefly outline the case against the fireman and shall call such witnesses and other evidence in support of that case as he thinks necessary in the circumstances:
- (e) Any documentary evidence produced by the presenting officer shall be made available for perusal by the fireman or his advocate if either of them so requires; and any documentary evidence produced by or on behalf of the fireman shall be made available for perusal by the presenting officer if he so requires:
- (f) If a witness gives evidence in support of any alleged breaches, the fireman, or, if he is represented by an advocate, the advocate, may cross-examine the witness in respect of that evidence:
- (g) Where any such witness is cross-examined, the presenting officer may re-examine him on any matter arising out of the cross-examination:
- (h) The presiding officer shall not permit any witness to be present during the submission of representations or the giving of evidence by any other witness:
- (i) After a witness has given evidence, the presiding officer shall ensure that the witness does not have access to any other witness who remains to give evidence:
- (j) Before opening the defence, the fireman, or, if he is represented by an advocate, the advocate, may submit that there is no case to answer. If the presiding officer rules that there is a case to answer, the inquiry shall proceed in accordance with paragraphs (k) to (n) of this subclause, but if he concludes that there is no case to answer in respect of all or any of the alleged breaches he shall dismiss the allegations in respect of the alleged breaches for which he concludes there is no case to answer:
- (k) The fireman may give evidence himself and may be cross-examined in respect of it by the presenting officer, and may be re-examined by his advocate (if any) in respect of matters arising out of the cross-examination:
- (l) The fireman, or, if he is represented by an advocate, the advocate, may call witnesses who may be cross-examined by the presenting officer and re-examined by the fireman or his advocate, as the case may be, on matters arising out of the cross-examination:
- (m) The fireman, or, if he is represented by an advocate, the advocate, may then address the presiding officer:
- (n) During the proceedings the presiding officer may question the presenting officer or the fireman or any witness:

(o) The presiding officer shall then deliberate on the evidence given and representations made at the inquiry and shall then determine whether or not the allegations (being allegations that have not been admitted or for which there is no case to answer) are well founded.

(3) If the fireman has admitted any breach of the code of good conduct or if the presiding officer at an inquiry finds an alleged breach against the fireman to be well founded, the following provisions shall apply:

- (a) The presiding officer may call for the fireman's Fire Service Council record card:
- (b) The presiding officer may then call on one or more officers or former officers of the brigade of which the fireman is a member or has been a member to speak as to his character and as to his conduct as a member of the brigade:
- (c) The fireman, or, if he is represented by an advocate, the advocate, may then address the presiding officer and plead for mitigation of any penalty which the presiding officer is empowered to impose on the fireman. In the address the fireman or his advocate, as the case may be, may plead in mitigation both the circumstances of the particular breach, the character of the fireman, and any other relevant matter:
- (d) The presiding officer may then announce the penalty (if any) to be imposed in respect of each breach of good conduct admitted by the fireman or found to have been committed by him, or the officer may reserve his decision for a period not exceeding 7 days:
- (e) No more than one of the penalties as specified in subsection (6) of the said section 4 may be imposed in respect of any one breach:
- (f) If the fireman is found to have committed two or more breaches of the code of good conduct, and the presiding officer considers that one penalty only is warranted, he may impose a penalty in respect of the most serious breach and take no action in respect of the other breach or breaches.

8. Procedure in respect of appeals under section 8 of the Act—(1)

Every appeal under section 8 of the Act shall be by way of rehearing. Where any question of fact is involved in the appeal, the evidence taken before the presiding officer whose decision is appealed against shall be brought before the urban fire authority hearing the appeal as follows:

- (a) As to any evidence given orally, by the production of a copy of the presiding officer's notes, or of a written statement read by a witness while under oath, or of such other materials as the authority thinks expedient:
- (b) As to any evidence taken by affidavit and as to any exhibits, by the production of the affidavits and such of the exhibits as may have been forwarded to the authority by the presiding officer; and by the production by the parties to the appeal of such exhibits as are in their custody.

(2) Notwithstanding anything in subclause (1) of this regulation, the authority may, if it thinks fit, rehear the whole or any part of the

evidence, and shall rehear the evidence of any witness if the authority has reason to believe that any note of the evidence made by the presiding officer is or may be incomplete in any material particular.

(3) Every such authority shall have full discretionary power to hear and receive further evidence on questions of fact, either by oral evidence or by affidavit.

(4) In exercise of its powers under this regulation, an authority may receive as evidence any statement, document, information, or matter that the presiding officer would have been entitled to receive at the inquiry to which the appeal relates.

(5) Every such appeal shall proceed as follows:

- (a) The appeal shall commence with the appellant, or, if he is represented by an advocate, the advocate, stating the grounds of the appeal:
- (b) The appellant, or, if he is represented by an advocate, the advocate, shall then, subject to the provisions of this regulation, adduce such evidence and make such representations as he desires to call or make in support of the appeal:
- (c) Where any evidence (whether it is fresh evidence or otherwise) is introduced by the appellant or his advocate, the presiding officer or an officer representing him may cross-examine the witness giving the evidence, and then the appellant, or, if he is represented by an advocate, the advocate, may re-examine the witness in respect of matters arising out of the cross-examination:
- (d) The presiding officer, or an officer representing him, may then make representations and adduce evidence in reply to the appeal:
- (e) Where any evidence (whether it is fresh evidence or otherwise) is introduced by or on behalf of the presiding officer, the appellant, or, if he is represented by an advocate, the advocate, may cross-examine the witness giving the evidence, and then the presiding officer or officer representing him may re-examine the witness in respect of matters arising out of the cross-examination:
- (f) The appellant, or, if he is represented by an advocate, the advocate, may then address the authority and sum up the appellant's case, and on completion of that address (if any), the presiding officer or officer representing him may comment on that address but may not introduce new material:
- (g) The authority shall then consider the representations made and the evidence given at the hearing and may either give its decision forthwith or reserve it for a period not exceeding 7 days.

(6) If an appellant does not prosecute his appeal with due diligence, the authority appealed to may, on application by the presiding officer, dismiss the appeal for want of prosecution.

9. Procedure for dealing with allegations made under section 9 of the Act—(1) Where any allegations have been made against a Chief

Fire Officer or Deputy Chief Fire Officer under section 9 of the Act, and an inquiry into those allegations is to be held in accordance with that section, then the following provisions shall apply:

- (a) The breach or breaches of good conduct alleged to have been committed by the officer shall be set out in a charge sheet prepared by the secretary of the authority:
- (b) The secretary of the authority shall cause a copy of the charge sheet to be served on the officer at least 24 hours before the inquiry commences:
- (c) Where a charge sheet contains more than one alleged breach of the code of good conduct, each such breach shall be set out in numbered paragraphs and shall be stated clearly and without duplication:
- (d) Where the same breach is alleged to have been committed by the officer on different occasions, the secretary shall prepare separate charge sheets in respect of each occasion:
- (e) Where the same facts give rise to two or more alleged breaches, the secretary shall cause each such alleged breach to be charged separately, but nothing in this paragraph shall prohibit all of the alleged breaches from being charged in the same charge sheet.

(2) Every inquiry held under section 9 of the Act shall, subject to the provisions of that section, proceed in accordance with the following procedure:

- (a) The chairman of the authority holding the inquiry shall read out aloud the charge sheet containing the allegations against the Chief or Deputy Chief Fire Officer to whom they relate, and he shall then ask the officer (if present) whether or not he admits or denies the allegations. Any answer given by the officer shall be recorded by the chairman. If no answer is given the officer shall be deemed to have denied the allegations:
- (b) If the officer concerned admits any alleged breach, no evidence (except as provided in subclause (3) of this regulation) shall be heard in respect of it, but if there are other alleged breaches which have not been admitted, the chairman shall postpone consideration of the action to be taken in respect of the admitted breach until the inquiry in respect of the alleged breaches which have not been admitted has been completed:
- (c) If the officer concerned refuses to state whether or not he admits or denies any allegation against him, the inquiry shall proceed as if he had denied it:
- (d) The person (in this regulation referred to as the prosecutor) appointed by the authority to prosecute the allegations against the officer shall then briefly outline the case against the officer and shall call such witnesses and other evidence in support of that case as he thinks necessary in the circumstances:
- (e) Any documentary evidence produced by the prosecutor shall be made available for perusal by the officer charged or his advocate if either of them so requires; and any documentary evidence produced by or on behalf of the officer shall be made available for perusal by the prosecutor if he so requires:

- (f) If a witness gives evidence in support of any alleged breach, the officer charged or his advocate (if any) may cross-examine the witness in respect of that evidence:
 - (g) Where any such witness is cross-examined, the prosecutor may re-examine him on any matter arising out of the cross-examination:
 - (h) The chairman of the authority shall not permit any witness to be present during the submission of representations or the giving of evidence by any other witness:
 - (i) After a witness has given evidence, the chairman shall ensure that the witness does not have access to any other witness who remains to give evidence:
 - (j) Before opening the defence, the officer, or, if he is represented by an advocate, the advocate, may submit that there is no case to answer. If the chairman rules that there is a case to answer in respect of any alleged breaches, the inquiry shall proceed in accordance with paragraphs (k) to (n) of this subclause; but if he concludes that there is no case to answer in respect of all or any of the alleged breaches, he shall dismiss the allegations in respect of the alleged breaches for which he concludes there is no case to answer:
 - (k) The officer may give evidence himself and may be cross-examined in respect of it by the prosecutor, and may be re-examined by his advocate (if any) in respect of matters arising out of the cross-examination:
 - (l) The officer, or, if he is represented by an advocate, the advocate, may call witnesses who may be cross-examined by the prosecutor and re-examined by the fireman or his advocate, as the case may be, on matters arising out of the cross-examination.
 - (m) The officer, or, if he is represented by an advocate, the advocate, may then address the members of the authority present:
 - (n) During the proceedings the chairman may question the prosecutor or the officer or any witness:
 - (o) The members of the authority shall then deliberate on the evidence given and representations made at the inquiry and shall then determine whether or not the allegations (being allegations that have not been admitted or for which there is no case to answer) are well founded.
- (3) If the officer has admitted any breach of the code of good conduct or if the authority finds an alleged breach against the officer to be well founded, the following provisions shall apply:
- (a) The chairman of the authority may call for the officer's Fire Service Council record card:
 - (b) The chairman may then call on any other Chief Fire Officer or Deputy Chief Fire Officer or former Chief Fire Officer or Deputy Chief Fire Officer who knows the officer to speak as to his character and as to his conduct:
 - (c) The officer, or, if he is represented by an advocate, the advocate, may then address the members of the authority and plead for mitigation of any penalty which the authority is empowered to impose on the officer. In the address the officer or his advocate,

as the case may be, may plead in mitigation both the circumstances of the particular breach, the character of the officer, and any other relevant matter:

- (d) The chairman of the authority may then announce the penalty (if any) to be imposed in respect of each breach of good conduct admitted by the officer or found to have been committed by him, or the authority may decide to reserve its decision for a period not exceeding 7 days:
- (e) No more than one of the penalties specified in subsection (6) of the said section 9 may be imposed in respect of any one breach:
- (f) If the officer is found to have committed two or more breaches of the code of good conduct, and the authority considers that only one penalty is warranted, it may impose a penalty in respect of the most serious breach and take no action in respect of the other breach or breaches.

10. Witnesses and taking of evidence—(1) Where any allegation is being inquired into under section 4 or section 9 of the Act, or any appeal is being heard under section 8 of the Act, the presiding officer or chairman of the authority as the case may be, may summon any member of a fire brigade to attend and give evidence at the inquiry or appeal, and to produce all books and documents in his custody or under his control which relate to the inquiry or appeal.

(2) The presiding officer or chairman may require any such evidence to be given on oath, either orally or in writing. Where the presiding officer or chairman requires evidence to be given on oath, the oath shall be administered by him.

(3) Every witness attending and giving evidence at an inquiry held under section 4 or section 9 of the Act, or at any appeal under section 8 of the Act, and every presenting officer, prosecutor, or advocate appearing at any such inquiry shall have the same privileges and immunities as witnesses and counsel in courts of law.

(4) The presiding officer at an inquiry under section 4 of the Act, or, as the case may be, the chairman presiding at an inquiry under section 9 of the Act, shall cause a note of all evidence given at the inquiry to be taken. Copies of the note of evidence shall be made available, if so requested, to the parties to the inquiry and at any proceedings by way of appeal from any decision made at the inquiry.

11. Protection of presiding officer and urban fire authority when inquiring into allegations, etc.—(1) Where an inquiry is held under section 4 of the Act, the presiding officer shall not be under any criminal or civil liability in respect of any thing done or omitted to be done, or of any words spoken or written, at or for the purposes of the inquiry, unless it is proved that the thing was done or omitted, or that the words were spoken or written, in bad faith.

(2) Where an inquiry is held under section 9 of the Act or an appeal is heard under section 8 of the Act, the chairman of the authority holding the inquiry or hearing the appeal, as the case may be, shall not be under any criminal or civil liability in respect of any thing done or omitted to be done, or of any words spoken or written, at or for the

purposes of the inquiry or appeal, unless it is proved that the thing was done or omitted, or that the words were spoken or written, in bad faith.

P. J. BROOKS,
Clerk of the Executive Council.

EXPLANATORY NOTE

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations enable the provisions of Part I of the Fire Services Amendment Act 1969 to be implemented. Part I of the regulations prescribes certain conditions of employment of firemen that are not set out in an industrial award or agreement.

Part II of the regulations prescribes the procedure for dealing with firemen and Chief and Deputy Chief Fire Officers who are alleged to have committed breaches of good conduct under Part I of the 1969 Act.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 14 May 1970.

These regulations are administered in the Department of Internal Affairs.