

u : IPCC (csa)

1st draft : 10.6.97

2nd draft : 11.6.97

3rd draft : 12.6.97

4th draft : 13.6.97

INDEPENDENT POLICE COMPLAINTS COUNCIL BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for Security

Clause

Amendment Proposed

2

- (a) In the definition of "complaint" -
- (i) in paragraph (a), by deleting "or" at the end;
 - (ii) in paragraph (b), by deleting the comma and substituting "; or" ;
 - (iii) by adding –
 - "(c) the conduct of any member of the police force which may be regarded as an abuse of his position or identity as a member of the police force," .
- (b) By deleting the definition of "witness" and substituting –
"witness" (證人) means a person who in the opinion of the Council may be able to

Clause

Amendment Proposed

Provide information or other assistance to the Council in connection with the exercising of its functions under this Ordinance.” .

- 4
- (a) In subclause (1)(b), by deleting “the Commissioner for Administrative Complaints appointed under the Commissioner for Administrative Complaints Ordinance” and substituting “The Ombudsman appointed under The Ombudsman Ordinance” .
 - (b) By adding –
 - “(1A) Notwithstanding subsection (1), any person who is a member of the police force shall not be appointed by the Governor under that subsection.” .

- 5
- By adding –
- “(3) Notwithstanding subsection (2)(e), a resolution is not valid and effectual where 2 or more members notify the Secretary in writing that the papers referred to in that subsection should be discussed at a meeting.” .

Clause

Amendment Proposed

- 6
- (a) In the heading by adding “and Legal Adviser” after “Secretary”
 - (b) By deleting subclause (1) and substituting –
“(1) The Council shall appoint a Secretary and a Legal Adviser of the Council who shall not be a member of the Council.” .
- 7
- (a) By deleting paragraph (a) and substituting –
“(a) to monitor and review the manner in which complaints are handled by the police force;” .
 - (b) By adding –
“(aa) to review the findings of the investigation conducted by the police force in respect of complaints;” .
 - (c) In paragraph (d), by adding “and investigation” after “handling” .
- 8
- (a) By adding –
“(da) to require the Commissioner to notify the person who made the complaint of the findings and the results of the investigation, if any, in respect of his complaint;

Clause

Amendment Proposed

- (db) require the Commissioner to submit to the Council a report on any action taken by the police force in respect of the recommendations made by the Council under section 7(d);” .
 - (b) In subclause (2), by deleting “(d) or (e)” and substituting “(d), (da), (db) or (e)” .
- 9
- (a) In subclause (2) (c), by adding “and investigation” after handling” .
 - (b) In subclause (3), by deleting “its recommendations referred to in subsection (2) (c)” and substituting “the matters referred to in subsection (2)” .
 - (c) By adding -
 - “(5) The Council may, if it considers appropriate, request the Commissioner to submit an interim report on the progress of the investigation of a complaint within 6 months from the date of the request and advise the Commissioner in writing in relation to any matter referred to in that report.” .
- 10
- (a) In subclause (1), by deleting “interview any witness in connection with the complaint” and substituting “,

Clause

Amendment Proposed

in connection with the complaint, interview any witness” .

(b) By adding –

“(1A) At any time after the Commissioner has submitted an interim report in respect of a complaint to the Council pursuant to section 9(5), the Council or any one of its members may with the consent of the Commissioner, in connection with the complaint, interview any witness.

(1B) The Commissioner shall give his consent referred to in subsection (1A) unless he is of the opinion that such interview would likely prejudice the investigation of any crime or complaint.” .

11

By adding –

“(5) For the purpose of this section, member includes the Secretary of the Council, the Legal Adviser of the Council, any former member of the Council, any former Secretary of the Council and any former Legal Adviser of the Council.” .

13

By adding –

Clause

Amendment Proposed

“(4) The Governor may cause the report referred to in subsection (2) or any part of such report to be laid before the Legislative Council.” .

14

(a) By deleting paragraph (a) and substituting –

“(a) the discharge by the Council of its functions and duties under this Ordinance ; ” .

(b) By deleting paragraph (b).

INDEPENDENT POLICE COMPLAINTS COUNCIL BILL

COMMITTEE STAGE

Amendment to be moved by Hon Zachary WONG Wai-yin

<u>Clause</u>	<u>Amendment Proposed</u>
6	<p>(a) By deleting the heading and substituting “Appointment of Secretary and Staff” ;</p> <p>(b) By adding –</p> <p>“(3) The Council may, on such terms and conditions as it thinks fit, appoint such persons (including technical and professional persons) as it think fit to assist it in the performance of its functions and the exercise of its powers under this Ordinance.”.</p> <p>(4) Subsection (3) shall come into operation on a day to be appointed by a resolution of the Legislative Council.”.</p>
8(1)(f)	<p>By adding after “complaint” –</p> <p>“and, for the purpose of the monitoring, engage such persons as the Council thinks fit to observe the manner in which a complaint is handled by the police force”.</p>
10	<p>By adding –</p> <p>“(8) statements made by a witness during an interview with the Council shall not be admissable as evidence against him in criminal proceedings in which the witness is a defendant.”.</p>

INDEPENDENT POLICE COMPLAINTS COUNCIL BILL

COMMITTEE STAGE

Amendments to be moved by the Hon James To Kun-sun

Clause

Amendment proposed

4

(a) In subclause (1)(a), by deleting everything after paragraph (iii) and substituting –

“including among them, at least 2 members of the Legislative Council ; and all members shall be appointed by the Governor for a term of 2 years ;”.

(b) In subclause 1(b), by deleting “.” and substituting “ ; and”.

(c) By adding –

“(c) the Commissioner for the Independent Commission Against Corruption appointed under the Independent Commission Against Corruption Ordinance (Cap. 204) (who shall be an ex officio member thereof), or a person nominated by him as his representative.”.

(d) By adding –

“(1A) Notwithstanding subsection (1), any person who is or has been a member of the police force shall not be

appointed by the Governor under that subsection.”.

6

(a) In the heading, by adding “,etc.” after “Appointment of Secretary”;

(b) By adding –

“(3) The Council shall have a Secretariat for which the Chairman may appoint such technical, professional persons or other persons, as he thinks fit to assist the Council in the performance of its functions and the exercise of its powers, under this Ordinance.”.

7

(a) By adding –

“(e) to determine the findings and the results of any investigation in respect of a complaint and to advise the Commissioner or, where appropriate, the Governor, on the action taken or to be taken in connection with that complaint ; ”.

(b) By adding –

“(f) to investigate any complaint where it is not satisfied with the report of the investigation submitted under section 9(1) or (2A) in respect of such complaint.”.

8

(a) By adding –

“(ba) investigate any complaint where it is not satisfied with the report of the investigation submitted under section 9(1) or (2A) in respect of such complaint and require the Commissioner to assist in the investigation of such complaint ;”.

(b) By adding –

“(fa) refer to –

(i) the Attorney-General ; or\

(ii) the Commissioner of the Independent Commission Against Corruption,

any matter in respect of a complaint ;

(fb) require that it be consulted by the Commissioner of any amendments to be made to the police general orders or headquarter orders under sections 46 and 47 of the Police Force Ordinance (Cap. 232) in respect of the handling or investigation of complaints, and it may make recommendations in this regards;”

(c) In subclause (2), be deleting “(b)” and substituting by “(b), (ba)”.

(d) In subclause (2), be deleting “unless he is satisfied that compliance with the requirement would likely prejudice” and substituting by “unless the Governor certifies that such compliance will prejudice”.

9

(a) By adding –

“(2A) The Council may., where it considers it appropriate, request an interim report from the Commissioner pertaining to

those matters in subsection (1)(a), (b), (c) and (d) ; and where it has done so, it may advise the Commissioner in writing of those matters in subsection (2)(a)(b) and (c).”.

10

(a) By deleting subclause (1) and substituting –

“(1) Where a complaint has been made against the police force, the Council or any one or more of its members or any person designated through a resolution by the Council, may interview any witness for the purposes of monitoring or reviewing the investigation of a complaint.”.

(b) By deleting subclause (2) and substituting –

“(2) The interview may be conducted by the Council, one or more of its members or any person designated under subsection (1) who may decide whether any other person shall be present at the interview.”.

(c) In subclause (4), by adding “or any person designated under subsection (1)” after “or members”.

(d) In subclause (5), by adding “or any person designated under subsection (1)” after “or members”.

11

(a) In subclause (3), by deleting “might” and substituting “will”.

(b) In subclause (4), by adding “without lawful excuse” before “fails”.

(c) By adding –

“(4A) It shall be a defence for a member of the Council or its Secretariat to prove that

the disclosure was made in order to reveal –

- (a) any lawful activity, abuse of power, serious neglect of duty or other serious neglect of duty or other serious misconduct by the police force ; or
- (b) a serious threat to public order or to the security of Hong Kong or to the health or safety of the public.”.

(d) By adding -

“(5) For the purpose of this section, member includes the Secretary, the Legal Adviser, any former member of the Council, any former Secretary of the Council, any former Legal Adviser of the Council, the Secretariat of the Council and any person engaged or designated by the Council.”.

14

- (a) In the heading, by deleting “Governor” after the “Power of” and substituting “The Council”
- (b) In the clause, by deleting “The Governor “ and substituting “The Council in consultation with the Governor”
- (c) In paragraph (e), by deleting “.” and substituting “;”.
- (d) By adding after paragraph (e) –

“so long as any regulation made does not contravene the generality of those powers and functions given to the Council under this Ordinance.”.

**Extract from the Report of the Hong Kong Special Administrative Region of
the People's Republic of China in the light of
the International Covenant on Civil and Political Rights**

X X X X X X X X X X X X X X

Complaints against the Police

X X X X X X X X X X X X X X

51. Paragraphs 11 and 12 of the Supplementary Report explained the measures that Government had taken – since the submission of the previous report – to enhance the transparency and credibility of the existing Police complaints system. And in 1997⁸, the Committee was advised of further developments that had been taken place between May 1996 and June 1997. The Committee may wish to note the developments have been taken place since then -

- (a) **IPCC observers scheme:** the scheme enables IPCC members to conduct scheduled or surprise visits to observe CAPO investigations in progress. The Government and the IPCC are working on a plan to increase the Council's ability to conduct such visits by appointing retired IPCC members and other community leaders as additional observers; and
- (b) improvement **measures arising from the independent review and the study of overseas system:** the Government has introduced over 40 measures to improve the working of the complaint system. The major ones were described in paragraph 48 of the report submitted on 30 June 1997. The following have been introduced since then -

⁸ Paragraph 48 of the Final Report by the United Kingdom of Great Britain and Northern Ireland in respect of Hong Kong under the International Covenant on Civil and Political Rights submitted by the United Kingdom on 30 June 1997 (CCPR/C/125).

- (i) **performance pledges:** CAPO made a formal commitment to handle complaints within various time limits. For example, complainants must be contacted within two working days; complainants and ‘complainees’ must be kept informed of the progress every two months; and every effort must be made to complete investigations within the four-month deadline report in paragraph 48(a) of the report submitted on 30 June 1997. In practice, simple cases are completed sooner.
- (ii) **transparency:** IPCC has continued with the transparency measures reported in paragraph 48(a) and (c) of the report submitted on 30 June 1997. And, since March 1998, the Council’s meetings have been partially open to the public;
- (iii) **“tipping-off” outlawed:** it has been made a disciplinary offence to ‘tip-off’ an officer who is the subject of a complaint; and
- (iv) **publicity:** The Government has given the IPCC Secretariat HK\$3 million for publicity programmes in 1997-2000. The IPCC and the CAPO have made greater efforts to inform the public about the Police complaints system and about their work.

X X X X X X X X X X

**Extract from the Report on the Hong Kong Special Administrative Region
under the Convention Against Torture and Other Cruel, Inhuman or
Degrading Treatment or Punishment**

X X X X X X X X X X

Article 12: prompt and impartial investigation of acts of torture

X X X X X X X X X X

Police

86. Complaints against Police officers are dealt with by the Complaints Against Police Office (CAPO) under the Commissioner of Police. But they are monitored and reviewed by a civilian body, the Independent Police Complaints Council (IPCC). The IPCC comprises non-official members appointed by the Chief Executive from a wide spectrum of the community. Any person aggrieved by the conduct of a Police officer in the execution of his duties may make a complaint to CAPO. The results of CAPO's investigations are rigorously scrutinised by the IPCC. In discharging their duties, IPCC members may observe CAPO investigations, either by prior arrangement or on a surprise basis. They may also interview complainants, complainees, witnesses and professionals – such as forensic pathologists – from whom they may receive expert advice.

87. Following an independent review of the complaints procedures and a comparative study of overseas Police complaints systems, the Government has introduced over 40 measures to enhance the transparency and credibility of the system in Hong Kong. These include -

- (a) setting target norms for the handling of complaints (such as the time limits within which CAPO must complete an investigation in normal circumstances);

- (b) establishing a special panel under the IPCC to monitor investigations of serious complaints;
- (c) tightening Police procedures: for example, requiring a duty officer at a police station to ask suspects – in the absence of investigation officers – whether they have any complaints against the Police and to report any such complaints to CAPO;
- (d) giving complainants more details of investigation results and making available additional information on CAPO procedures at all police stations;
- (e) opening part of the IPCC's meetings to the public; and
- (f) launching a \$3 million publicity campaign to enhance public awareness of the complaints system.

88. Statistics relating to cases handled by the CAPO and endorsed¹ by the IPCC are at Annex 9. These show that the number of complaints alleging assault has decreased over the past three years. Only seven of the 1,324 allegations of assault (1997) were substantiated. None were found to amount to acts of torture.

89. In July 1996, the Government introduced a Bill into the then Legislative Council with the aim of making the IPCC a statutory body. The Bill was withdrawn in June 1997 after Legislators moved major amendments which – if implemented – would have disrupted the effective operations of the Police complaints system, fundamentally changing the main principles of the Bill.

¹ In this context, 'endorsed' means that, having examined the findings of CAPO investigations, the IPCC agrees with them. If it does not, the Council can ask CAPO to clarify areas of doubt or to reinvestigate the complaint.

90. At the time of drafting this report, the Government was reviewing the provisions of the Bill and considering the way forward.

X X X X X X X X X X X