

**Legislative Council
Panel on Security**

**Background paper prepared
by the Legislative Council Secretariat**

Independent Police Complaints Council

26 June 2002

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Independent Police Complaints Council

Purpose of paper

This paper gives an account of the discussions so far held by Members of the Legislative Council (LegCo) and relevant information on the Independent Police Complaints Council (IPCC).

Background

2. The IPCC is an independent body responsible for monitoring and reviewing investigations by the Complaints Against Police Office (CAPO) into public complaints against the Police. It comprises members of the community appointed by the Chief Executive (CE), including a Chairman, three Vice-Chairmen and 14 non-official members. The Ombudsman or her representative serves as an ex-officio member.

3. There is also the IPCC Observers Scheme under which Lay Observers, who are either retired IPCC members or members of the community, are appointed by the Secretary for Security (S for S) to observe the manner in which complaints are handled by the CAPO. At present, there are 59 Lay Observers.

4. The IPCC is supported by a full-time secretariat staffed by civil servants. They comprise a Secretary, a Legal Adviser and 24 general grades staff.

Background to the introduction of the Independent Police Complaints Council Bill into Legislative Council in 1996

Council sitting on 21 April 1993

5. At the Council sitting on 21 April 1993, Hon James TO moved the following motion on the CAPO -

"That this Council urges the Government to set up an independent body to receive and investigate complaints in relation to police officers with a view to replacing the existing Complaints Against Police Office under the Police Force."

The motion was carried.

6. Subsequent to the motion debate, the Administration decided to implement a

range of proposals to improve the police complaints system. One of the proposals was to make the Police Complaints Council, which was renamed as the IPCC in December 1994, a statutory body.

Comparative study of complaints against police systems in Hong Kong and other places

7. In May 1995, the IPCC, the Security Branch and the Police also jointly conducted a comparative study of the complaints against police systems in Hong Kong and 10 other places. The report on the comparative study was issued in June 1996. The major recommendations arising from the comparative study are in **Appendix I**.

Review conducted by the Independent Police Complaints Council in 1996

8. In January 1996, the IPCC conducted a review on the investigation procedures of the CAPO. Measures recommended in the report on the review included, among other things, setting time limits for investigations and establishing special monitoring procedures for the investigation of serious complaints.

The Independent Police Complaints Council Bill introduced into Legislative Council on 10 July 1996

9. The Independent Police Complaints Council Bill, introduced into LegCo on 10 July 1996 (the 1996 Bill), sought to make the IPCC a statutory body in order to provide a legal basis for the IPCC to discharge its functions of monitoring and reviewing investigations by the CAPO. The Bill mainly sought to -

- (a) Empower the IPCC to, inter-alia, require the Commissioner of Police to submit a report, to refer a complaint case back to CP for reinvestigation, to require CP to provide an explanation on action taken by the Police on a complaint, and to monitor the CAPO's investigation actions;
- (b) Entitle members of the IPCC to the same protection and privileges as those given to magistrates; and
- (c) Require the IPCC to submit reports on the exercise of its functions to the Governor on an annual basis, who would cause the report to be laid before LegCo.

10. A copy of the 1996 Bill is in **Appendix II**.

Bills Committee on Independent Police Complaints Council Bill

11. A Bills Committee was formed at the House Committee meeting on 20 September 1996 to study the 1996 Bill in detail. The Bills Committee held 13 meetings with the Administration. It also met the Chairman of the IPCC and representatives from the Hong Kong Human Rights Commission, Society of Community Organisation and Hong Kong Human Rights Monitor. A copy of the report of the Bills Committee is in **Appendix III**. The minutes of meetings of the Bills Committee are available on the Research and Library Information System (RLIS) and the LegCo website at <http://www.legco.gov.hk/yr95-96/english/bc/bc53/papers/bc53ppr.htm>17.

Resumption of Second Reading debate and Committee Stage of the Independent Police Complaints Council Bill at the Legislative Council sitting of 23 June 1997

Resumption of Second Reading debate and Committee Stage

12. The Second Reading debate on the 1996 Bill resumed at the LegCo sitting of 23 June 1997. During the Committee Stage, a number of amendments were moved respectively by S for S, Hon Zachary WONG, Chairman of the Bills Committee, and Hon James TO. The most controversial amendments were those moved by Hon James TO to empower the IPCC to investigate or reinvestigate any complaint where the IPCC was not satisfied with the results of the CAPO's investigations, and to determine the acceptability of the findings and results of the investigation of all complaints. The major Committee Stage amendments (CSAs) and the Council's decisions on these amendments are set out in paragraphs 13 to 34 below.

Committee Stage amendments

Definition

13. A CSA moved by S for S to widen the definition of complaint to include complaints in respect of the abuse of position or identity of any member of the Police was carried.

Membership

14. CSAs moved by S for S to, among other things, provide that existing members of the Police should not be IPCC members were carried.

15. A CSA moved by Hon James TO to specify that the Governor should appoint at least two LegCo Members to the IPCC was carried.

16. The following CSAs moved by Hon James TO were negatived -

- (a) To provide for the appointment of the Commissioner, Independent

Commission Against Corruption (ICAC) as an ex-officio member of the IPCC; and

- (b) To provide that both existing and past members of the Police should not be IPCC members.

Meetings

17. A CSA moved by S for S to enable papers under circulation for decision by the IPCC to be discussed at a meeting, if two or more IPCC members so wished, was carried.

Appointment of Secretary and Legal Adviser

18. A CSA moved by S for S to empower the IPCC to appoint its own Secretary and Legal Adviser was carried.

19. CSAs moved by Hon James TO to empower the Chairman of the IPCC to appoint technical, professional or other persons to assist the IPCC in carrying out its functions were carried.

Functions of the IPCC

20. CSAs moved by S for S to state explicitly that the function of the IPCC was to monitor and review each and every complaint, review the findings of investigations and make recommendations in respect of the investigations were carried.

21. The following CSAs moved by Hon James TO were carried -

- (a) To empower the IPCC to determine whether the findings and results of the Police's investigation of a complaint were acceptable, make its findings and results, and advise CP or the Governor on the action to be taken in connection with that complaint; and
- (b) To empower the IPCC to investigate any complaint where it was not satisfied with the report on investigation submitted by CP.

Powers of the IPCC

22. The following CSAs moved by S for S were carried -

- (a) To empower the IPCC to require CP to notify the complainant of the findings and results of investigation; and
- (b) To empower the IPCC to require CP to submit any report on any action taken in respect of the recommendations made by the IPCC on a complaint.

23. The following CSAs moved by Hon James TO were carried -

- (a) To require CP to consult the IPCC before making amendments to Police General Orders or Headquarter Orders in respect of handling or investigation of complaints;
- (b) To empower the IPCC to investigate or reinvestigate any complaint where the IPCC was not satisfied with the results of the CAPO's investigation; and
- (c) To empower the IPCC to refer cases to the Attorney General and the ICAC.

24. A CSA moved by Hon Zachary WONG on behalf of the Bills Committee to empower the IPCC to engage persons to observe the handling of complaints against the Police by the CAPO was carried.

25. A CSA moved by Hon James TO to provide that CP must comply with prescribed requests from the IPCC unless the Governor certified that such compliance would prejudice the security of Hong Kong was negatived.

Procedure

26. CSAs moved by S for S to empower the IPCC to request the Police to submit an interim investigation report were carried.

Interviewing witnesses

27. CSAs moved by S for S to empower the IPCC to interview witnesses after receipt of an interim report from CP, unless CP was of the opinion that such interview would likely prejudice the investigation of any crime or complaint, were carried.

28. A CSA moved by Hon Zachary WONG on behalf of the Bills Committee to provide that no part of an interview of a witness should be used to incriminate the witness was carried.

29. CSAs moved by Hon James TO to empower the IPCC to interview any witness after a complaint had been made but before the CAPO had completed its investigations were negatived.

Secrecy

30. CSAs moved by Hon James TO to make it a defence for disclosure in order to reveal any unlawful activity, abuse of power, serious neglect of duty or other serious misconduct by a Police officer, or a serious threat to public order or the security of Hong Kong were carried.

31. Clause 11(3) proposed that the Governor could, by certification, prevent the disclosure of a matter which "might" prejudice security, defence or international relations in respect of Hong Kong or would otherwise be contrary to public interest. Hon James TO moved a CSA to substitute "might" with "will". The Member also proposed to qualify the statutory defence for the offence of failing to maintain secrecy by IPCC members by adding "without lawful excuse". Both CSAs were negatived.

Report

32. A CSA moved by S for S to provide that the Governor might consider causing IPCC reports other than its annual report to be laid before LegCo was carried.

Power to make regulations

33. CSAs moved by S for S to set out in clear terms that regulation would only be made to facilitate the IPCC to discharge its functions and duties were carried.

34. CSAs moved by Hon James TO to empower the IPCC to make regulations in consultation with the Governor were carried.

Withdrawal of the 1996 Bill

35. S for S withdrew the 1996 IPCC Bill at the beginning of proceedings for Third Reading.

36. Although S for S did not give any reason when he announced the withdrawal of the Bill, S for S had, during the Second Reading debate, stated that the Administration could not possibly accept Hon James TO's amendments to empower the IPCC to investigate any complaint where it was not satisfied with the CAPO's investigation, and to determine the acceptability of the findings and results of the investigation of all complaints.

37. During the Committee Stage debate on Hon James TO's aforementioned amendments to the relevant clauses, S for S put it strongly that "these amendments were totally, totally, unacceptable to the Administration".

38. The official record of proceedings of the Council sitting of 23 June 1997 is available on the RLIS and the LegCo website at http://www.legco.gov.hk/yr96-97/english/lc_sitg/general/yr9697.htm.

Motion moved by Hon Zachary WONG on the Independent Police Complaints Council Bill at the Legislative Council sitting of 23 June 1997

39. In view of the Administration's withdrawal of the 1996 Bill, Hon Zachary WONG, Chairman of the Bills Committee, moved the following motion (with the leave of the President) at the LegCo sitting of 23 June 1997 -

"That this Council strongly urges the Government to expeditiously re-introduce the Independent Police Complaints Council Bill into this Council."

The motion was carried.

40. During the debate on the motion, while reiterating that the CSA which empowered the IPCC to investigate or reinvestigate complaints was unacceptable, the Administration stated that it was committed to continue with the implementation of additional measures arising from the IPCC's own review of the investigation procedures of the CAPO, including -

- (a) Setting up a special IPCC panel to monitor serious cases, and enabling the IPCC to submit its findings in a special report to the Government;
- (b) Tightening up the CAPO's procedures to prevent any tipping-off of officers under complaint;
- (c) Gauging public opinion towards the overall performance of the Police, including the police complaints system, by regular surveys;
- (d) Setting time limits for the CAPO in handling complaints and keeping a complainant informed of progress as far as possible; and
- (e) Opening part of the IPCC's meetings to the public.

The official record of proceedings of the Council sitting is available on the RLIS and the LegCo website at http://www.legco.gov.hk/yr96-97/english/lc_sitg/general/yr9697.htm.

Other discussions by Legislative Council and its committees on the Independent Police Complaints Council since the first Legislative Council term

Panel on Home Affairs

Meeting on 23 September 1999

41. At the special meeting of the Panel on Home Affairs on 23 September 1999, some of the deputations invited to give views on the Initial Report of the Hong Kong Special Administrative Region (HKSAR) of the People's Republic of China in the light of the International Covenant on Civil and Political Rights pointed out that the Initial Report (paragraph 51 -- extract in **Appendix IV**) did not address the concern that investigation of complaints against the Police remained in the charge of the Police.

Meeting on 13 March 2000

42. The Panel on Home Affairs held another special meeting on 13 March 2000 to listen to submissions on -

- (a) the Concluding Observations made on 4 November 1999 by the United Nations Human Rights Committee after its hearing on the Initial Report of the HKSAR under the International Covenant on Civil and Political Rights; and
- (b) Report of the HKSAR under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

43. Regarding paragraph 42(b) above, an extract from the report on the relevant paragraphs (86 to 90) is in **Appendix V** for Members' easy reference.

44. Some deputations shared the concern of the Human Rights Committee that investigation of complaints against Police officers under CP lacked credibility. The Human Rights Committee stated in paragraph 11 of its Concluding Observations made on 4 November 1999 that it took the view that the IPCC "has not the power to ensure proper and effective investigation of complaints against the police. The Committee remains concerned that investigations of police misconduct are still in the hands of police themselves, which undermines the credibility of these investigations".

Conclusions and Recommendations of the Committee against Torture issued on 9 May 2000

45. In its Conclusions and Recommendations issued on 9 May 2000, the Committee against Torture "notes as positive strengthening of the independence of the Independent Police Complaints Council" (paragraph 30) and "recommends that continued efforts be made to ensure that the Independent Police Complaints Council becomes a statutory body, with increased competence" (paragraph 38).

Council Questions

46. At the Council meeting on 8 July 1998, Hon James TO raised a question about a complaint against the Police's broadcasting of music to subdue the voice of demonstrators on 30 June 1997, where the CAPO considered that the Police had not made any mistake but the IPCC considered the complaint substantiated, and submitted a report to CE. The official record of proceedings of the Council meeting is available on the RLIS and the LegCo website at http://www.legco.gov.hk/yr98-99/english/counmtg/general/cou_mtg.htm.

47. At the Council meeting on 3 May 2000, Hon Emily LAU raised a question on the establishment of independent monitoring bodies similar in nature and composition to the advisory committees of the ICAC to oversee the work of the Police. The official record of proceedings of the Council meeting is available on the RLIS and the LegCo website at http://www.legco.gov.hk/yr99-00/english/counmtg/general/cou_mtg.htm#9900.

Consultation paper on a revised Independent Police Complaints Council Bill

48. The Security Bureau issued a consultation paper on a revised IPCC Bill on 1 March 2002 for public consultation. The deadline for submission of views on the consultation paper was 12 April 2002. According to the consultation paper, the revised IPCC Bill is mainly based on the 1996 Bill. It seeks to provide a statutory basis for the operations of the IPCC. It would, among other things, provide for the establishment of an independent secretariat for the IPCC and prescribe the IPCC Observers Scheme in legislation. The consultation paper is available at the HKSAR Government website at <http://www.info.gov.hk/sb/eng/report/police/index.htm>.

49. As discussed in paragraph 21(a) above, during the Committee Stage of the 1996 Bill, a CSA moved by Hon James TO to empower the IPCC to determine whether the findings and the results of the Police's investigation of a complaint were acceptable, make its findings and results, and advise CP or the Governor on the action taken or to be taken in connection with that complaint was carried. The Administration has stated in the consultation paper that "the CSA was unacceptable because it might create two different sets of findings and results in respect of a complaint, and cause confusion. It also deviated from the established practice that the IPCC and the CAPO came to a

consensus on the classification of a complaint".

50. As an alternative, the Administration proposes to empower the IPCC to consider whether the findings and the results of any investigation of a complaint, or action taken or to be taken by CP are acceptable, and advise CP of its view, or if it considers appropriate, advise CE. This proposal will enable the IPCC to advise CP, and if it considers appropriate, CE of its views on the relevant matters. The Administration is of the view that in the event that the IPCC is not satisfied with an investigation, it can ask the CAPO to reinvestigate the complaint, or make a report to CE.

51. As discussed in paragraph 23(b) above, during the Committee Stage of the 1996 Bill, a CSA moved by Hon James TO to empower the IPCC to investigate any complaint where it was not satisfied with an investigation report submitted by the CAPO, and to require CP to assist in its investigation was carried. The Administration has stated in the consultation paper that "this CSA was unacceptable because it would lead to confusion about the role of the IPCC as a monitoring body. Moreover, there were strong doubts on the feasibility and cost-effectiveness of such a proposal".

52. As discussed in paragraph 24 above, during the Committee Stage of the 1996 Bill, a CSA moved by Hon Zachary WONG to provide that the IPCC could engage such persons as it considered fit (including professionals such as experienced investigators or legal experts) to observe the manner in which a complaint was handled by the Police was carried. According the consultation paper, the Administration proposes to prescribe the existing IPCC Observers Scheme (which was not provided in the 1996 Bill) in the revised IPCC Bill. Under the existing Scheme, S for S, instead of the IPCC, may appoint such persons she thinks fit to observe the manner in which a complaint is handled by the Police.

53. Based on the information in the consultation paper, the Administration will incorporate in the revised IPCC Bill the following amendments carried during the Committee Stage of the 1996 Bill -

- (a) To widen the definition of complaint to include complaints in respect of the abuse of position or identity of any member of the Police (paragraph 13 above);
- (b) To provide that existing members of the Police should not be IPCC members (paragraph 14 above);

- (c) To enable papers under circulation for decision by the IPCC to be discussed at a meeting, if two or more IPCC members so wished (paragraph 17 above);
- (d) To empower the IPCC to appoint its own Secretary and Legal Adviser (paragraph 18 above);
- (e) To empower the Chairman of the IPCC to appoint technical, professional or other persons to assist the IPCC in carrying out its functions (paragraph 19 above);
- (f) To state explicitly that the function of the IPCC was to monitor and review each and every complaint, review the findings of investigations and make recommendation in respect of the investigations (paragraph 20 above);
- (g) To require CP to notify the complainant of the findings and results of investigations (paragraph 22(a) above);
- (h) To empower the IPCC to require CP to submit any report on any action taken in respect of the recommendations made by the IPCC on a complaint (paragraph 22(b) above);
- (i) To require CP to consult the IPCC before making amendments to Police General Orders or Headquarter Orders in respect of handling or investigation of complaints (paragraph 23(a) above);
- (j) To empower the IPCC to request the Police to submit an interim investigation report (paragraph 26 above);
- (k) To empower the IPCC to interview witnesses after receipt of an interim report from CP, unless he was of the opinion that such interview would likely prejudice the investigation of any crime or complaint (paragraph 27 above); and
- (l) To empower the IPCC to make regulations in consultation with the Governor, and to set out that such regulations would only be made to facilitate the IPCC to discharge its functions and duties (paragraphs 33 and 34 above).

54. While the following amendments were carried during the Committee Stage of the 1996 Bill, there is no mention in the consultation paper that such proposals will be included in the revised IPCC Bill -

- (a) To specify that the Governor should appoint at least two LegCo Members to the IPCC (paragraph 15 above);
- (b) To empower the IPCC to refer cases to the Attorney General and the ICAC (paragraph 23(c) above);
- (c) To provide that no part of an interview of a witness should be used to incriminate the witness (paragraph 28 above);
- (d) To make it a defence for disclosure that revealed any unlawful activity, abuse of power, serious neglect of duty or other serious misconduct by a Police officer, or a serious threat to public order or the security of Hong Kong (paragraph 30 above); and
- (e) To provide that the Governor might consider causing IPCC reports other than its annual report to be laid before LegCo (paragraph 32 above).

55. Members may wish to refer to **Appendix VI** for a comparison of the major proposals in the Administration's public consultation document issued on 1 March 2002 with the relevant provisions in the 1996 Bill.

Meeting of the Panel on Security on 2 May 2002

56. At the Panel meeting on 2 May 2002, the Administration briefed members on the progress of the public consultation exercise on the revised IPCC Bill.

57. The Administration informed members that the views collected so far in the public consultation exercise indicated that some people were satisfied with the existing complaints against police system and some were dissatisfied. There were both views in support of providing the IPCC with the power of investigation and views against such a proposal.

58. Some members considered that the IPCC should be empowered to conduct independent investigations. Some other members considered that the IPCC should at least be empowered to conduct independent investigations in the IPCC's review of the CAPO's investigations or in special cases where consent of CE or the Chief Secretary for Administration had been obtained, and to conduct reinvestigations into more serious complaints.

59. The Administration stressed that its position in respect of providing IPCC with investigative power had been set out in the public consultation document issued by the Administration on 1 March 2002. Nevertheless, the Administration would consider all views received in the public consultation exercise before finalising its legislative proposals.

Council Business Division 2
Legislative Council Secretariat
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Appendix I

Major recommendations arising from the comparative study of complaints against police systems in Hong Kong and other places

- (a) Requiring the IPCC to submit its findings on serious cases in a special report to the Governor;
- (b) Making "tipping-off" of Police officers being complained against a disciplinary offence;
- (c) The adoption of performance pledges, where practicable, to improve the efficiency of the system and address the concern that the investigation of some complaints might take considerable time to complete;
- (d) Providing complainants with more details of investigation results;
- (e) Opening part of the IPCC's meetings to the public;
- (f) Taking a more proactive role in publicising the IPCC's work on a more regular basis to enhance transparency; and
- (g) Conducting regular surveys and researches to gauge public opinion towards the overall performance of the Police, including the police complaints system.