

**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.htm17>.

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
26 June 2002

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.

Appendix II

附錄 II

**INDEPENDENT POLICE
COMPLAINTS COUNCIL BILL**

投訴警方獨立監察委員會條例草案

INDEPENDENT POLICE COMPLAINTS COUNCIL BILL
INDEPENDENT POLICE COMPLAINTS COUNCIL BILL

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投訴警方獨立監察委員會條例草案
投訴警方獨立監察委員會條例草案

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A BILL

To

Provide a statutory basis for the Independent Police Complaints Council, to define its functions and powers, and to provide for matters incidental thereto or connected therewith.

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

PART I

PRELIMINARY

1. Short title and commencement

- (1) This Ordinance may be cited as the Independent Police Complaints Council Ordinance.
- (2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Security by notice in the Gazette.

2. Interpretation

In this Ordinance, unless the context otherwise requires—
 “Commissioner” (處長) means the Commissioner of Police;
 “complaint” (投訴) means a complaint in respect of—
 (a) the conduct of any member of the police force in the execution or purported execution of his duties; or
 (b) any practice or procedure adopted by the police force, made by a person who is aggrieved thereby (otherwise than in an official capacity as a member of the police force), but does not include any complaint in respect of an alleged contravention of any Ordinance relating to road traffic which carries a fixed penalty for such contravention;

本條例草案

旨在

為投訴警方獨立監察委員會提供一個法定基礎、界定其職能及權力，以及對附帶或相關事宜作出規定。

由香港總督參照立法局意見並得該局同意而制定。

第I部

導言

1. 簡稱及生效日期

- (1) 本條例可引稱為《投訴警方獨立監察委員會條例》。
- (2) 本條例自保安司以憲報公告指定的日期起實施。

2. 釋義

在本條例中，除文意另有所指外——
 “投訴”(complaint)指任何因以下事情而感到受屈(但並非因作為警隊成員的公職身分而感到受屈)的人士就該等事情所作出的投訴——
 (a) 任何警隊成員在執行或其意是執行其職責時的行為；或
 (b) 警隊所採納的任何常規或程序，
 但不包括就指稱違反關乎道路交通的任何條例(該條例規定對該項違反處以定額罰款)而作出的任何投訴；

“Council” (委員會) means the Independent Police Complaints Council referred to in section 3;
 “member of the police force” (警隊成員) includes a public officer attached to the police force;
 “police force” (警隊) means the Royal Hong Kong Police Force and also the Royal Hong Kong Auxiliary Police Force established under the Royal Hong Kong Auxiliary Police Force Ordinance (Cap. 233);
 “witness” (證人) means a person who has provided or might be able to provide information or other assistance in connection with the investigation of a complaint.

PART II

INDEPENDENT POLICE COMPLAINTS COUNCIL

3. Continuance of the Council

The Independent Police Complaints Council existing immediately before the commencement of this Ordinance shall continue to exist as a body known as the Independent Police Complaints Council.

4. Membership of the Council

- (1) The Council shall consist of—
- (a) (i) a Chairman;
 - (ii) 3 Vice-Chairmen; and
 - (iii) not less than 8 other members,
- each of whom shall be appointed by the Governor for a term of 2 years; and
- (b) the Commissioner for Administrative Complaints appointed under the Commissioner for Administrative Complaints Ordinance (Cap. 397) (who shall be an ex officio member thereof), or a person nominated by him as his representative.
- (2) The Chairman, any Vice-Chairman and any other member appointed under subsection (1)(a)—
- (a) may be reappointed upon expiry of their respective terms of office; and
 - (b) may resign his office by notice in writing to the Governor.
- (3) If, for any period—
- (a) the Chairman, any Vice-Chairman or any other member appointed under subsection (1)(a) is precluded by illness, absence from Hong Kong or any other cause from exercising his functions; or

“委員會”(Council)指第3條所提述的投訴警方獨立監察委員會;
 “處長”(Commissioner)指警務處處長;
 “證人”(witness)指在調查投訴方面已提供或可能有能力提供資料或其他協助的人;
 “警隊”(police force)指皇家香港警隊及根據《皇家香港輔助警隊條例》(第233章)成立的皇家香港輔助警隊;
 “警隊成員”(member of the police force)包括隸屬警隊的公職人員。

第II部

投訴警方獨立監察委員會

3. 委員會的延續

在緊接本條例生效日期前已存在的投訴警方獨立監察委員會須沿用此名稱而繼續存在。

4. 委員會的成員

- (1) 委員會須由以下人士組成——
- (a) (i) 主席1名;
 - (ii) 副主席3名;及
 - (iii) 最少8名其他成員,
- 每人均須由總督委任,任期為2年;及
- (b) 根據《申訴專員條例》(第397章)委任的申訴專員(申訴專員須為委員會的當然成員)或一名由他提名為其代表的人。
- (2) 主席、任何副主席及任何根據第(1)(a)款獲委任的其他成員——
- (a) 在其各別的任期屆滿時可再獲委任;及
 - (b) 可藉向總督給予書面通知而辭職。
- (3) 如在任何期間——
- (a) 主席、任何副主席或任何根據第(1)(a)款獲委任的其他成員因患病、不在香港或任何其他因由而不能行使其職能;或

(b) the office of any one of them is vacant pending a new appointment or reappointment, the Governor may appoint another person to act in his place during that period and as such to exercise and perform all the functions, powers and duties of the Chairman, Vice-Chairman or member, as the case may be.

5. Meetings of the Council

(1) The Council shall meet as often as is necessary, and at such times and places as the Chairman or in his absence, one of the Vice-Chairmen may appoint from time to time for the purpose of exercising its functions.

(2) The following provisions shall apply to every meeting of the Council and subject thereto the Council may regulate its own procedure—

- (a) at any meeting of the Council, 5 members or 1/3 of the number of members, whichever is the lesser, shall form a quorum;
- (b) the Chairman shall preside or in his absence, the members present shall appoint one of the Vice-Chairmen to preside or, if both the Chairman and the 3 Vice-Chairmen are absent, the members present shall appoint one of themselves to preside;
- (c) every question shall be determined by a majority of votes of the members present and voting thereon;
- (d) in the event of an equality of votes the member presiding shall have a casting vote in addition to his ordinary vote;
- (e) anything which may be done at a meeting of the Council may be done by the circulation of papers for the consideration of members; and a resolution signed by a majority of the members shall be as valid and effectual as if it had been passed at a meeting by the votes of the members so signing.

6. Appointment of Secretary

(1) The Governor shall appoint a public officer to act as the Secretary of the Council who shall not be a member of the Council.

(2) The Council shall determine the duties of the Secretary, and may delegate to him such authority as may from time to time be required.

7. Functions of the Council

The functions of the Council shall be—

- (a) to monitor and, where it considers appropriate, review the manner in which complaints are handled by the police force;
- (b) to keep under review the statistics referred to in section 8(1)(e);

(b) 他們當中任何一人的職位懸空以待新的委任或再委任，總督可委任另一人在該段期間內暫代該人的職位，以行使和履行主席、副主席或成員（視屬何情況而定）的所有職能、權力及職責。

5. 委員會的會議

(1) 委員會須為行使其職能的目的，在主席或（在主席不在時）其中一名副主席不時指定的時間及地點，舉行所需次數的會議。

(2) 以下條文適用於委員會的每次會議，而在不抵觸該等程序條文的情況下，委員會可規管其本身的程序——

- (a) 在委員會的任何會議中，5名成員或成員人數的三分之一（以較少者為準）即構成法定人數；
- (b) 須由主席主持會議；如主席缺席，則由出席的成員推選其中一名副主席主持會議；如主席及3名副主席均缺席，則由出席的成員推選他們其中一人主持會議；
- (c) 每項問題均須由出席會議並就該問題投票的成員的過半數票取決；
- (d) 如票數均等，主持會議的成員除有權投普通票外，另有權投決定票；
- (e) 任何可在委員會會議上處理的事項，均可藉傳閱文件供成員考慮的方式處理；由過半數成員簽署的任何決議，其有效性及效力須猶如該決議是在會議上由簽署該決議的成員投票通過的一樣。

6. 秘書的委任

- (1) 總督須委任一名公職人員擔任委員會秘書，而該秘書不得擔任委員會成員。
- (2) 委員會須決定秘書的職責，並可將不時所需的權力轉授予秘書。

7. 委員會的職能

委員會的職能為——

- (a) 監察和在其認為適當時檢討警隊處理投訴的方式；
- (b) 對第8(1)(e)條所提述的統計數字不時進行檢討；

- (c) to identify any faults or deficiencies in the procedures adopted by the police force which lead to or might lead to complaints;
- (d) to make recommendations in respect of the handling of any complaint or the action taken or to be taken in connection with any complaint to the Commissioner or, if it considers appropriate, to the Governor.

8. Powers of the Council

- (1) The Council may, where it considers appropriate—
- (a) require the Commissioner to submit to the Council a report on any complaint, to provide any information, file, document or material relating thereto or to clarify any fact or discrepancy pertaining thereto;
 - (b) require the Commissioner to investigate or reinvestigate any complaint or any matter relating to a complaint;
 - (c) interview any witness for the purpose of exercising its functions under this Ordinance;
 - (d) require the Commissioner to provide an explanation in respect of any action that has been taken by the police force arising out of a complaint;
 - (e) require the Commissioner to compile and submit to the Council statistics of the types of conduct of members of the police force that lead to complaints;
 - (f) monitor, review or report on any action taken by the police force in respect of a complaint;
 - (g) do all such other acts as are reasonably necessary for the exercise or performance of all or any of the powers or duties of the Council under this Ordinance or do any other thing which is incidental or conducive to the exercise of the functions of the Council.
- (2) Notwithstanding section 4 of the Police Force Ordinance (Cap. 232), the Commissioner shall comply with any requirement under subsection (1)(a), (b), (d) or (e), unless he is satisfied that compliance with the requirement would likely prejudice the security of Hong Kong or the investigation of any crime.

9. Procedure, etc.

- (1) Where the Commissioner has completed his investigation of a complaint, he shall as soon as practicable submit a report of the investigation to the Secretary of the Council which shall contain—
- (a) a summary of the investigation;
 - (b) a finding of facts;

- (c) 找出警隊所採納的程序在引致或可能引致投訴方面的任何錯失或不足之處；
- (d) 就任何投訴的處理或就關乎任何投訴而採取或將會採取的行動向處長提出建議或在其認為適當時就該等事項向總督提出建議。

8. 委員會的權力

- (1) 凡委員會認為適當，可——
- (a) 要求處長就任何投訴向其呈交報告、提供與該宗投訴有關的任何資料、檔案、文件或材料，或澄清關於該宗投訴的任何事實或矛盾之處；
 - (b) 要求處長調查或重新調查任何投訴或與某宗投訴有關的任何事項；
 - (c) 為行使其在本條例下的職能而會見任何證人；
 - (d) 要求處長就警隊因某宗投訴而採取的任何行動作出解釋；
 - (e) 要求處長編製和向委員會呈交引致投訴的警隊成員的行為類別統計數字；
 - (f) 監察或檢討警隊就某宗投訴所採取的任何行動或就該行動作出報告；
 - (g) 作出所有為行使或履行委員會在本條例下的所有或任何權力或責任而合理地需要的其他作為，以及作出行使委員會職能所附帶的任何其他事情，或有助於行使委員會職能的其他事情。
- (2) 儘管有《警隊條例》(第 232 章)第 4 條的條文，處長須遵從根據第(1)(a)、(b)、(d)或(e)款所提出的要求，但如處長信納遵從該要求會相當可能危害香港的保安或任何罪行的調查，則屬例外。

9. 程序等

- (1) 凡處長已完成對某宗投訴的調查，處長即須在切實可行的範圍內盡快向委員會秘書呈交一份調查報告，報告須載有——
- (a) 調查的撮要；
 - (b) 對事實的調查所得；

- (c) the action taken or to be taken in respect of the complaint; and
 - (d) such other information as the Commissioner thinks necessary.
- (2) The Council shall advise the Commissioner in writing of—
- (a) its opinion on the investigation report submitted under subsection (1);
 - (b) its findings, if any, in respect of the complaint to which the investigation report relates; and
 - (c) its recommendations, if any, in respect of the handling of the complaint or the action taken or to be taken in connection with the complaint.
- (3) The Council may, if it considers appropriate, submit any of its recommendations referred to in subsection (2)(c) to the Governor.
- (4) The Council shall discuss from time to time with the Commissioner or his representatives nominated in that behalf any issue arising from the monitoring or review of any action taken by the police force in respect of a complaint.

10. Interview with witness

- (1) At any time after the Commissioner has submitted an investigation report in respect of a complaint to the Council pursuant to section 9(1), the Council or any one or more of its members may interview any witness in connection with the complaint.
- (2) The Council may designate one or more of its members to conduct an interview and decide whether any other person shall be present at the interview.
- (3) Every interview shall be conducted in private.
- (4) No barrister or solicitor shall have a right of audience before the Council unless he is acting on his own behalf as a witness, but he may accompany a witness during an interview if the Council or the member or members conducting the interview thinks or think fit.
- (5) Unless the Council decides otherwise, a witness under the age of 16 shall attend an interview with his parent or guardian or a person over the age of 18 who has an interest in the welfare of the witness and is in the opinion of the Council or the member or members conducting the interview an appropriate person to be present at the interview.
- (6) The Council shall keep a record of every interview and such record shall not be used other than for the purpose of exercising its functions under this Ordinance.
- (7) Subject to this Ordinance, the Council may regulate the procedure of conducting interviews.

- (c) 對該宗投訴所採取或將會對該宗投訴採取的行動；及
 - (d) 處長認為需要的其他資料。
- (2) 委員會須以書面將以下各項告知處長——
- (a) 委員會對根據第(1)款呈交的調查報告的意見；
 - (b) 委員會就該調查報告所關乎的投訴而作出的裁斷(如有的話)；及
 - (c) 委員會就該投訴的處理或就關乎該投訴而採取或將會採取的行動提出的建議(如有的話)。
- (3) 如委員會認為適當，可將第(2)(c)款所描述的委員會提出的任何建議呈交總督。
- (4) 委員會須不時與處長或處長為此提名的代表討論因監察或檢討警隊就某宗投訴所採取的任何行動而引起的任何問題。

10. 會見證人

- (1) 在處長已依據第9(1)條就某宗投訴的調查向委員會呈交報告後，委員會或其任何一名或多於一名的成員可在任何時間就該宗投訴會見任何證人。
- (2) 委員會可指定其任何一名或多於一名的成員會見證人，並可決定在會見時是否須有任何其他人在場。
- (3) 每次會見須以非公開形式進行。
- (4) 除非大律師或律師本身是證人，否則並無在委員會席前發言的權利，但如委員會或進行會見的成員認為合適，則大律師或律師可在會見時陪同任何證人出席。
- (5) 除非委員會另有決定，否則未滿16歲的證人須在其父母或監護人的陪同下，或在任何年齡超過18歲和對證人的福利有利關係並且是委員會或進行會見的成員認為適合在會見時在場的人的陪同下，出席任何會見。
- (6) 委員會須備存每次會見的紀錄，而該紀錄除為委員會行使在本條例下的職能的目的而使用外，不得用於其他用途。
- (7) 在符合本條例的規定下，委員會可規管進行會見證人的程序。

11. Secrecy

(1) Every member of the Council shall, subject to subsections (2) and (3), maintain secrecy in respect of all matters that arise from any complaint and come to their actual knowledge in the exercise of their functions.

(2) Subsection (1) shall not apply so as to prevent any member of the Council from—

- (a) disclosing in the course of any criminal, civil or disciplinary proceedings in respect of which a complaint is relevant, any matter relevant to those proceedings;
- (b) reporting evidence of any crime to such authority as he considers appropriate;
- (c) disclosing to a person any matter referred to in subsection (1) which, in the opinion of the member, may be ground for a complaint by that person.

(3) The Council may disclose in any report made by it under this Ordinance any matter that in its opinion ought to be disclosed in order to establish grounds for its conclusions and recommendations, other than a matter in respect of which the Governor certifies that its disclosure might prejudice security, defence or international relations (including relations with any international organization) in respect of Hong Kong or would otherwise be contrary to the public interest.

(4) Any member of the Council who fails to comply with subsection (1) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 2 years.

12. Protection to members

A member of the Council shall have such and the like protection and privileges in case of any action or suit brought against him for any act done or omitted to be done in the execution of his duty as is by law given to any magistrate acting in the execution of his office.

13. Report

(1) The Council shall in each year make a general report to the Governor concerning the exercise of the functions of the Council under this Ordinance during the previous year.

(2) In addition to the report referred to in subsection (1), the Council may from time to time make such other reports to the Governor as it deems necessary.

(3) The Governor shall cause the report referred to in subsection (1) to be laid before the Legislative Council.

11. 保密

(1) 除第(2)及(3)款另有規定外，委員會的每名成員均須將任何投訴所引起並在其行使職能時所實際知悉的一切事項保密。

(2) 第(1)款不得應用於阻止委員會的任何成員——

- (a) 在與投訴有關的任何刑事或民事法律程序或紀律處分程序中，披露與該等程序有關的任何事項；
- (b) 向其認為適當的主管當局舉報任何刑事罪的證據；
- (c) 在其認為第(1)款所述的事項是可作為任何人作出投訴的理由時，向該人披露該事項。

(3) 委員會在根據本條例作出的任何報告中，可披露任何其認為應予披露以支持其結論及建議的事項，但如總督證明披露該事項可能有損香港的保安、防衛或國際關係(包括與任何國際組織的關係)，或會在其他方面有違公眾利益，則不得披露該事項。

(4) 委員會的任何成員不遵守第(1)款，即屬犯罪，可處第5級罰款及監禁2年。

12. 成員的保障

在針對委員會的成員就執行其職責時的任何作為或不作為而提出的法律行動或訴訟中，該成員享有的保障及特權，與裁判官在執行其職務而行事時獲法律所給予的保障及特權相同。

13. 報告

(1) 委員會須每年向總督作出報告，概述委員會在過去一年根據本條例行使委員會職能的情況。

(2) 除第(1)款所提述的報告外，委員會可不時向總督作出委員會認為需要的其他報告。

(3) 總督須安排將第(1)款所提述的報告提交立法局省覽。

14. Power of Governor to make regulations

The Governor may by regulation provide for—

- (a) the discharge by the Council of additional functions and duties;
- (b) the time, place and manner, when, where and in which the Council shall exercise and perform its functions and duties;
- (c) the Council being assisted by such other persons and classes of persons as may be prescribed, in the exercise and performance of all or any of its functions and duties;
- (d) any other matters required by or under this Ordinance;
- (e) generally, the carrying out of the provisions of this Ordinance.

15. Transitional provisions

(1) Where any matter or thing has been commenced by or under the authority of the Independent Police Complaints Council existing immediately before the commencement of this Ordinance, such matter or thing shall be carried on and completed by the Council after such commencement.

(2) Every person who immediately before the commencement of this Ordinance holds an appointment as the Chairman, a Vice-Chairman, a member or the Secretary of the Independent Police Complaints Council shall continue, as from such commencement but subject to the terms of his appointment, to be the Chairman, a Vice-Chairman, a member or the Secretary of the Council, as the case may be, for the purposes of this Ordinance.

Explanatory Memorandum

This Bill seeks to provide a statutory basis for the Independent Police Complaints Council, the principal function of which is to monitor and review investigations by the Royal Hong Kong Police Force into complaints against the police.

2. Clause 2 contains the definitions necessary for the interpretation of the Bill.
3. Clause 3 provides for the continuance of the Council.
4. Clause 4 sets out the membership of the Council and provides for the appointment of its Chairman, Vice-Chairmen and members.
5. Clause 5 provides for the procedure at meetings of the Council.
6. Clause 6 provides for the appointment of the Secretary of the Council.
7. Clauses 7 and 8 provide for the functions and powers of the Council.

14. 總督訂立規例的權力

總督可藉規例就以下事宜訂定條文——

- (a) 委員會履行額外的職能及責任；
- (b) 委員會行使和履行其職能及責任的時間、地點及方式；
- (c) 由其他訂明的人及訂明類別的人，協助委員會行使和履行其全部或任何職能及責任；
- (d) 本條例所規定或根據本條例規定的任何其他事項；
- (e) 概括而言，本條例條文的施行。

15. 過渡性條文

(1) 凡任何事宜或事情已由在緊接本條例生效日期前已存在的投訴警方獨立監察委員會展開或已在其授權下展開，該項事宜或事情均須由該委員會在生效日期後繼續進行和完成。

(2) 為施行本條例，在緊接本條例生效日期前已出任投訴警方獨立監察委員會的主席、副主席、成員或秘書的每名人士，在其委任條款的規限下，由該生效日期起，繼續擔任該委員會的主席、副主席、成員或秘書(視屬何情況而定)。

摘要說明

本條例草案旨在為投訴警方獨立監察委員會提供一個法定基礎。該委員會的主要職能是監察和檢討皇家香港警隊對警隊的投訴所作的調查。

2. 草案第2條載有解釋本條例草案所需的定義。
3. 草案第3條規定委員會須予延續。
4. 草案第4條列出委員會的成員，以及對委員會的主席、副主席及成員的委任作出規定。
5. 草案第5條就委員會會議程序作出規定。
6. 草案第6條就委員會秘書的委任作出規定。
7. 草案第7及8條規定委員會的職能及權力。

8. Clause 9 sets out the working procedures between the Council and the police.
9. Clause 10 provides for the procedures of conducting interviews with witnesses.
10. Clause 11 imposes upon the Council a duty to maintain secrecy except in certain circumstances.
11. Clause 12 extends the same protection and privileges to members of the Council as are given to magistrates.
12. Clause 13 requires the Council to make reports to the Governor.
13. Clause 14 empowers the Governor to make regulations.
14. Clause 15 contains transitional provisions.

8. 草案第9條列出委員會與警隊之間的工作程序。
9. 草案第10條規定會見證人的程序。
10. 草案第11條規定委員會有保密的責任，但在某些情形下則例外。
11. 草案第12條將裁判官獲給予的保障及特權擴及委員會的成員。
12. 草案第13條規定委員會須向總督作出報告。
13. 草案第14條賦權總督訂立規例。
14. 草案第15條載有過渡性條文。

Ref : CB2/BC/53/95

Paper for the House Committee

**Report of the Bills Committee on
Independent Police Complaints Council Bill**

Purpose

This paper reports on the deliberations of the Bills Committee on the Independent Police Complaints Council Bill and seeks members' support for the Bill to resume its Second Reading debate on 23 June 1997.

The Bill

2. The Bill seeks to make the existing Independent Police Complaints Council (IPCC) a statutory body. It will provide the legal basis for IPCC to discharge its functions of monitoring and reviewing investigations by the Complaints Against Police Office (CAPO), which deals with all complaints against police officers. In the Administration's view, making the existing IPCC a statutory body would enhance its credibility and public confidence in the police complaints system.

The Bills Committee

3. The House Committee agreed on 20 September 1996 that a Bills Committee should be formed to study the Bill. The Bills Committee was activated on 22 November 1996. A membership list of the Bills Committee is in **Appendix I**.

4. Under the chairmanship of Hon Zachary WONG Wai-yin, the Bills Committee held 13 meetings with the Administration. It has met the Chairman of existing IPCC, representatives from the Hong Kong Human Rights Commission, Society of Community Organization and Hong Kong Human Rights Monitor.

Deliberations of the Bills Committee

5. While welcoming the Bill to make IPCC a statutory body, however, with the functions and powers of IPCC remain basically unchanged, the Bills Committee has expressed concern about any significant improvements to enhance the credibility of, and public confidence in, the Police complaints system. The issues and concerns on the handling of complaints system and specific provisions in the Bill discussed by the Bills Committee are summarized below.

POLICE COMPLAINTS SYSTEM

Civilian head of CAPO

6. The Bills Committee considers that to enhance public confidence in the Police complaints system, it is necessary to have non-police element in CAPO. The Bills Committee has questioned the Administration's rejection of the proposals by the existing IPCC to appoint a non-police personnel as head of CAPO. Under the proposals, the civilian head of CAPO would be administratively responsible to the Commissioner of Police but functionally responsible to IPCC. Alternatively, the civilian head would remain accountable to the Commissioner of Police in all aspects, but the CAPO/IPCC link could be strengthened. The Bills Committee considers that the proposals does not involve drastic changes to the existing system of handling complaints against police. The proposed introduction of a non-police element in CAPO would not interfere with CAPO's investigation function.

7. The Administration holds the view that the head of CAPO, being responsible for the direction of investigation of complaints against the Police and where necessary personally conducting investigation of some serious cases, must be well familiar with the work of police officers and the operation of the Police Force at all levels. A civilian head may not be fully equipped for the effective overseeing of CAPO's investigations. The Administration maintains that the present machinery is basically effective. To enhance its role, IPCC would set up a special panel to monitor and review serious cases including suspicious cases involving death or serious injuries, cases in which IPCC could not endorse CAPO's investigation and cases involving considerable public interest.

8. Some members do not accept the Administration's explanations. Drawing reference to the Independent Commission Against Corruption (ICAC) which is headed by non-disciplined services officer, members fail to see why CAPO could not be headed by a non-police officer. Members also notes that the appointment of a civilian head of CAPO remains the stand of the existing IPCC.

9. Hon Mrs Selina CHOW objects to the proposal for a civilian head of CAPO. She is of the view that as long as CAPO remains within the Police Force, it is illogical to have a non-police officer heading CAPO.

"Tipping off" complaints

10. As part of the improvement measures to enhance the credibility of the existing complaints system, the Administration is amending the Police General Order (PGO) to make "Tipping off" to officers being complained a disciplinary offence. The Bills Committee considers that "Tipping off" is by its nature a serious wrongful conduct, which would undermine the credibility of the complaints system, and should be strictly prohibited. Regardless the severity of the matter giving rise to a complaint, any act of "Tipping off" should be made a criminal offence. The Committee has pointed out that under the Fire Safety (Commercial Premises) Ordinance, unlawful disclosure of information obtained officially is liable on conviction to six month's imprisonment.

11. The Administration fully agrees that officers being complained should not be forewarned as it will compromise the impartiality of the handling of complaints. It is, however, against the proposal to make "Tipping off" a criminal offence. The proposal, if implemented, would pose serious difficulties to the Police in investigating complaints. In complaints which involve criminal element, officers committing "Tipping off" may be prosecuted with criminal charges such as "perverting the course of public justice" under the common law, "assisting offenders" or "concealing offences" under the Criminal Procedure Ordinance. In the past three years there was only one complaint which could be related to allegation of "Tipping off". There is no indication that "Tipping off" is a rampant problem. The Administration is taking a serious view on the matter and committed to making "Tipping off" a disciplinary offence.

12. The Bills Committee, however, has pointed out it would be extremely difficult to prosecute a person for "Tipping off" with criminal charges such as "perverting the course of public justice", in particular in cases of relatively trivial nature e.g. incourtesy, where no criminal element is involved. To provide sufficient deterrent effect, the Committee remains of the view that irrespective of the nature of the complaint, "Tipping off" should be criminalized.

PROVISIONS IN THE BILL

Investigative power of IPCC

13. To equip IPCC with an effective tool to discharge its function of monitoring over CAPO's investigations, some members consider that IPCC should be empowered to conduct independent investigations or to engage non-police officers to undertake investigations.

14. The Administration has responded that the main functions of IPCC are to monitor and review the investigation of any complaints against the Police conducted by CAPO, to identify any faults or deficiencies in the Police procedures which give rise to or might give rise to complaints, and to make any recommendations in respect of the investigation of any complaints against the Police by CAPO to the Commissioner of Police or to the Governor if appropriate. It is inappropriate to empower IPCC to conduct investigations on the grounds that :

- (a) complaints against the Police often involve allegations of breaches of criminal law or of Police discipline or procedures. Non-police personnel do not have the necessary professional expertise and knowledge of how the Police actually operates;
- (b) some complaints involve breaches of criminal law and it would be inappropriate for non-police personnel to take over criminal investigations; and
- (c) this will cause a confusion of roles in the system. The present policy is for CAPO to conduct investigations and IPCC to perform the monitoring and reviewing functions. If IPCC is to take up the investigation responsibility, there will be no mechanism to monitor and review the investigations conducted by IPCC.

The Administration considers that there are appropriate checks and balance on the present system. IPCC could raise queries about the findings of CAPO's investigation and require re-investigation of the case.

15. The Bills Committee has divided views on the issue. Some members consider that in situations where IPCC is not satisfied with CAPO's investigation findings, IPCC should have the power to conduct an independent investigation. This would enhance the public confidence in the system. Some members, however, have reservations about the IPCC's investigative power. Hon Mrs Selina CHOW, representing the Liberal Party, takes the stand that the basic function of IPCC is to monitor and review complaint investigations, any proposal of making IPCC an alternative investigative body duplicating the role of CAPO will be unacceptable.

16. Hon James TO will move Committee stage amendments (CSAs) to clauses 7 and 8 of the Bill to empower IPCC to investigate or re-investigate any complaint where IPCC is not satisfied with the results of CAPO's investigation. Without such an investigative power, he is in doubt whether IPCC could effectively monitor the handling of complaints by CAPO.

17. The Administration strongly objects to the amendments proposed by Hon James TO. The Administration stresses that these would involve adverse fundamental changes to the existing Police complaints system. As a civilian body which monitors and reviews CAPO's investigation of complaints against the Police, IPCC should not be empowered to undertake investigations. To enable IPCC to conduct investigation will lead to duplication of efforts and interference with Police's investigation. As the existing Police complaints system is by and large operating effectively and is not out of step with other overseas police jurisdictions, the Administration does not see the need for such a fundamental change.

Engagement of persons to observe the handling of complaints by CAPO

18. To enhance its monitoring role, the Bills Committee has proposed that IPCC should be empowered to engage professionals, such as experienced investigators and legal experts, on a full-time or part-time permanent basis to inspect or observe CAPO's investigations.

19. The Administration has advised that since April 1996, IPCC has adopted the IPCC Observers Scheme whereby IPCC members may observe CAPO's investigations, both scene visit and statement taking through scheduled or surprise visits. In view of the difficulties in recruiting and retaining full-time IPCC observers with the right calibre, the Administration has proposed to expand the IPCC Observers Scheme by co-opting former IPCC members and community leaders. This would still achieve the objective of having part-time observers. When detailed arrangements are in hand, the Administration would make the provision through subsidiary legislation. The Administration emphasizes that it is important to have a sufficiently large pool of observers so that it could adequately reflect the different views of the community on the handling of complaints against the Police. The observation of CAPO's investigation does not require professionally trained observers.

20. The Bills Committee considers it important to specify in the Bill the power of IPCC to engage such persons to observe the handling of complaints against the Police by CAPO. A CSA to this effect to clause 8 will be moved by the Bills Committee.

Membership of the Council (Clause 4)

Appointment of LegCo Members

21. To ensure a desirable balance in the composition of the membership of IPCC and to maintain a constitutional link, some members have suggested that not less than two members of IPCC should be Members of the Legislative Council.

22. The Administration is of the view that the appointment of IPCC members is made on an ad personam basis. The objective is to get the best person for the job, having regard to the individual's ability, expertise and commitment to public service. The existing appointment system is working well. Introducing a statutory requirement to appoint LegCo Members to IPCC will introduce undue rigidity into the appointment system.

23. Hon James TO disagrees with the Administration's explanations. He will move a CSA to specify that the Governor should appoint at least two LegCo Members to IPCC.

Appointment of Commissioner of ICAC

24. On the suggestion of appointing the Commissioner of ICAC as IPCC member, the Administration, after consulting ICAC, considers that the Commissioner of ICAC should not be involved in monitoring and reviewing non-corruption related complaints against the Police. This would distract ICAC from its principle objective of fighting corruption.

25. To make use of the expertise of Commissioner, ICAC in investigations and dealing with complaints, Hon James TO will move a CSA to provide for Commissioner, ICAC as an ex-officio member of IPCC.

Appointment of members of the Police Force

26. At members' suggestion, the Administration has agreed to add a provision to make it clear that any existing members of the Police Force should not be appointed as IPCC members. Hon James TO, however, considers that both existing or past members of the Force should not be IPCC members. He will move a CSA to this effect.

Appointment of Secretary (clause 6)

27. To enhance the public perception of the independence of IPCC, the Bills Committee has proposed to empower IPCC to appoint its Secretary and staff of the Secretariat, including the Legal Adviser.

28. The Administration takes the view that the existing arrangements of appointing civil servants to the IPCC Secretariat would not affect the independence of IPCC. To provide flexibility, IPCC should be empowered to decide whether the Secretary should be a civil servant seconded to IPCC or any person recruited outside the civil service. To address members' concern, the Administration has agreed to the appointment of its Secretary and Legal Adviser by IPCC and will move a CSA accordingly. The Administration, however, does not agree to extend the appointment of non-civil servants to other posts as the Secretariat only plays a supporting role to IPCC and is already operating independently.

29. The Bills Committee considers it important that IPCC should be provided with the flexibility to appoint such technical, professional and other persons in the Secretariat to assist in the carrying out of its functions and powers and to enhance public perception of an independent IPCC. These persons may or may not be civil servants. The Bills Committee will move CSAs to this effect.

Functions of the Council (clause 7)

30. The Administration has explained that clause 7 sets out the functions of IPCC. The policy intent is to provide that IPCC should monitor and review the manner in which any complaint is handled by CAPO. Apart from matters related to the manner and procedures, IPCC may review the findings of CAPO's investigations. It may make recommendations in respect of the handling and investigation of any complaint to the Commissioner of Police, or if it considers appropriate, to the Governor. At the request of the Bills Committee, the Administration has agreed to move CSAs to state explicitly its policy intent.

Determination of findings of investigations

31. Some members opine that, being a monitoring and review authority, IPCC should have the power to determine whether or not a complaint is substantiated based on its own judgement on the case. IPCC should exercise such power independently of the conclusions by CAPO. Hon James TO has proposed to add a CSA to specify that IPCC may determine the findings and the results of any investigation of a complaint and the action to be taken in connection with that complaint.

32. The Administration does not agree with the CSA proposed by Mr TO as this should be the responsibility of the Commissioner of Police. In the event that IPCC does not agree with the Commissioner of Police in respect of these matters, IPCC may make recommendations in respect of the handling and investigation of any complaint or action taken or to be taken

to the Governor, who may direct the Commissioner as the Governor thinks fit.

Powers of the Council - referral to ICAC or Attorney General (clause 8)

33. Some members have suggested that serious complaint cases where IPCC could not agree to the result of investigation by CAPO could be referred to ICAC for re-investigation as ICAC investigators possess the skills and know-how necessary for the discharge of duties of CAPO. In addition, ICAC has the authority to investigate cases where abuse of powers by public officers may be involved. Any re-investigation by ICAC should be conducted at the request of IPCC. It would not undermine the credibility of IPCC. Suggestion has also been made to empower IPCC to refer any matter in respect of the complaint to the Attorney General (AG).

34. The Administration submits its disagreement to referring non-corruption related complaint cases or unresolved cases to ICAC for investigation or re-investigation. At present, there is no legislative provisions empowering ICAC to investigate complaints against police officers which do not fall within its ambit. The Administration has advised that ICAC would not wish to extend its powers to investigate police officers in non-corruption cases as it would distract from its principal objective of fighting corruption. As for corruption-related complaints, the Police will forward such cases to ICAC. The existing IPCC also does not consider it appropriate to refer non-corruption related cases or unsolved cases to ICAC. IPCC is accountable only to the Governor and ICAC's re-investigation may be seen as IPCC being subject to ICAC's final decision. As regards the suggestion of referring any matter in respect of a complaint to AG, this is in fact the existing practice. The Administration, however, sees no need to make such a provision as IPCC can do so under clause 8(1)(g).

35. Some members have expressed objections or reservations on empowering ICAC to investigate into unresolved cases or any complaint cases with no corruption element.

36. Hon James TO will move a CSA to empower IPCC to refer any matter in respect of a complaint to ICAC or AG.

Procedure, etc. (clause 9)

37. The Administration has agreed, in response to the Bills Committee's suggestions, to make the following amendments to clause 9 :

- (a) to enable IPCC to submit any of its recommendations as referred to under subsection (2) to the Governor; and

- (b) to add a provision to make it explicit that IPCC may request an interim report on the progress of investigation to enable it to monitor the investigation of the complaint. IPCC may advise the Commissioner of Police of its opinion, findings and recommendations in respect of the complaint.

38. The Administration has also undertaken to mention during the resumption of the Second Reading debate of the Bill that a summary of the investigation will include the findings of investigation.

Interviewing witnesses (Clause 10)

39. Clause 10(1) provides that at any time after the Commissioner of Police has submitted an investigation report in respect of a complaint to IPCC, the IPCC or its members may interview any witness in connection with the complaint.

40. The Bills Committee has sought clarifications as to whether IPCC can interview witnesses not previously seen by CAPO and engage independent professionals to give expert advice on areas relevant to the investigation of the complaint. In so doing, whether this would amount to an investigation on the part of IPCC.

41. The Administration has clarified that its policy intent is to enable IPCC or its members to interview witnesses. Investigation of a complaint against a police officer is a process consisting of more than just an interview. It involves the gathering of evidence from the scene or elsewhere. To make it explicit that IPCC may interview any witness including a person who has not been interviewed by CAPO during the investigation of the complaint and any independent expert witness, the Administration has agreed to amend the definition of "witness" in clause 2 and clause 10(1).

42. The Bills Committee has pointed out that under certain special circumstances, IPCC may see an urgent need to interview certain witnesses, even prior to such witnesses being seen by CAPO. The restrictive condition in clause 10(1) which specifies that IPCC can only conduct the interview after the Police has submitted the investigation report should be removed in order to allow flexibility for IPCC to interview witness, where appropriate, after a complaint has been made.

43. The Administration has explained that the purpose of the IPCC Interviewing Witness Scheme is to enable IPCC to clarify areas of doubt on the part of CAPO's investigation. It is not intended to enable IPCC to take a fresh statement from the witness. Without the completion of an investigation report, IPCC would not be in a position to know what aspect of the investigation needs to be clarified. Statement taking from witness is

an important part of an investigation and CAPO must do so while the memory of the witness is fresh and without any interference. CAPO may also need to re-interview a witness in the course of the investigation. The Administration therefore considers it appropriate for IPCC to interview a witness after the completion of an investigation. The Administration has pointed out that a special monitoring panel has been set up in IPCC to closely monitor the investigation of serious cases. CAPO may be required to brief panel members on details of the complaint and progress of investigation. Panel members may monitor closely the investigation through the IPCC Observers Scheme. The panel will convey its findings, observations and recommendations to IPCC on the cases. This will ensure that the investigation of serious complaints is closely monitored and any undue delay in the investigation will be subject to IPCC's scrutiny. Furthermore, IPCC members may observe the statement taking process by CAPO.

44. Some members remain of the view that IPCC should be able to interview witnesses after a complaint has been made in order for it to fulfil its monitoring and reviewing functions. Some members have reservations because of the likely resource implications and undue pressure on IPCC. Hon James TO will move the following amendments to :

- (a) clause 10(1) to provide for the interview of witnesses by IPCC members or any person designated by IPCC after a complaint has been made; and
- (b) clauses 10(2), 10(4) and 10(5) to provide for the interview to be conducted by one or more IPCC members or any person designated by IPCC.

45. The Administration objects to the amendments by Mr TO. The interview of witness is to enable IPCC to clarify any issues arising from the complaint which the witness may assist. IPCC may decide under clause 10(2) whether any other person should be present at the interview, but IPCC members, instead of other persons, should conduct the interview. The proposal to enable IPCC to interview witness prior to the completion of an investigation may impede the investigation process. To address members' concern and without impeding the investigation process, the Administration has agreed to move CSAs to empower IPCC to interview witness after receipt of an interim report with the consent of the Commissioner of Police, unless he is of the opinion that such interview would likely prejudice the investigation of any crime or complaint.

46. To enable a witness to give statements with complete frankness, the Bills Committee has agreed to add a provision to the effect that no part of the interview should be used to incriminate the witness. The statements made by the witness would be inadmissible as evidence against him in court proceedings in which the witness is a defendant. The Administration has

pointed out that IPCC Interviewing Witness Scheme is a voluntary process. No one, including the complainant or complainee, can be forced to be interviewed by IPCC or forced to reply to any questions asked by IPCC members during the interview. The witness retains his full privilege against self-incrimination during the interview. The Administration does not see any need to make such a provision. The Administration is of the view that this provision would have the effect that if a witness, including the complainant or complainee, chooses to confess to a crime totally unrelated to the subject of his complaint, nothing he says may be used against him.

Secrecy (clause 11)

47. The Bills Committee has suggested the Administration consider adding a provision to enable members of IPCC to fulfil other statutory requirements, such as those under the Legislative Council (Powers and Privileges) Ordinance. The Bills Committee has also suggested to provide a "lawful excuse" to IPCC member who fails to comply with the secrecy rule.

48. The Administration holds the view that IPCC members should maintain secrecy in respect of the matters arising from any complaint that come to their knowledge, other than the circumstances set out in clause 11(2). They should enjoy the protection and privileges as are given to any magistrate acting in the execution of his office. However, the Secretary, former Secretary, Legal Adviser, former Legal Adviser and former members of IPCC should also be required to comply with the secrecy provision. The Administration will move a CSA to reflect this point.

49. The Bills Committee is particularly concerned about clause 11(3) which provides IPCC to disclose any matter in its report made by it under the Ordinance, other than matters which are certified by the Governor that its disclosure might prejudice security, defence or international relations in respect of Hong Kong or would otherwise be contrary to the public interest. The Bills Committee has suggested to add a provision to the effect that every time the Governor make a certification under clause 11(3), the fact that he has exercised this power should be made public. This is to safeguard the public's right to know the exercise of such power.

50. The Administration has responded that the purpose of clause 11(3) is to provide authority to the Governor to deal with extremely rare situations where sensitive issues involving national security and the like occurred. In the event that the Governor makes a certification under this clause to prevent the disclosure of certain matter, it would up to IPCC to decide whether and how this fact should be disclosed in its report. So far, the Governor has not made any such certification.

51. To provide a higher standard of requirement, Hon James TO will move a CSA to specify that the Governor may, by certification, prevent the disclosure of a matter which will prejudice security, defence or international relations in respect of Hong Kong or would otherwise contrary to public interest. The Administration disagrees. Given the importance of the matters involved, the Governor's discretion in preventing the disclosure of certain matter by IPCC should not be restricted as proposed by Mr TO.

52. As regards Mr TO's another proposed CSA to provide a defence for a IPCC member or the Secretariat if they can prove that a disclosure is to reveal any unlawful activity, serious misconduct by the Police, or a serious threat to public order, security of Hong Kong or public health, the Administration disagrees as the CSA would effectively mean that any time an IPCC member wants to disclose something, he can do so by referring to the very broad grounds under the proposed provision. This would negate the whole purpose of the secrecy provision. The Administration has pointed out that IPCC may report evidence of any crime to the appropriate authority as provided under clause 11(2)(b).

Report (clause 13)

53. The Bills Committee considers that apart from the general report of IPCC, the Governor should cause the report as referred to in clause 13(2), i.e. such other special reports made to the Governor by IPCC, to be laid before the Legislative Council (LegCo). This is to ensure that LegCo will be informed of cases of serious public concern. The Administration has agreed and will move a CSA accordingly.

Power of Governor to make regulations (clause 14)

54. The Bills Committee has proposed that IPCC should be empowered to make its own regulations. The Administration believes that, as IPCC is accountable to the Governor, the Governor is the proper authority to make the regulations as to how IPCC would perform its functions and duties. In making the regulations, the Governor will have full regards to the views of IPCC. Any regulations made by the Governor will be subject to the scrutiny by LegCo.

55. Hon James TO maintains the view that IPCC should be able to make regulations on the carrying out of its duties and functions. He will move CSAs to empower IPCC, in consultation with the Governor, to make regulations, and that the regulations cannot contravene the generality of the powers and functions given to IPCC under the Bill.

Honorarium to IPCC members

56. In view of the substantial and regular work of IPCC members, the Bills Committee has suggested that honorarium or allowance should be given to IPCC members. The Administration considers this reasonable and will set the appropriate level of honorarium. This will be made through administrative means.

Committee stage amendments

57. Apart from the CSAs mentioned above, the Administration has agreed to move other amendments, mainly for the purpose of clarity, consistency or reflecting existing practices. A full set of CSAs to be moved by the Administration is in **Appendix II**.

58. The CSAs to be moved by the Chairman of the Bills Committee, on behalf on the Bills Committee are in **Appendix III**.

59. The CSAs to be moved by Hon James TO are in **Appendix IV**.

Recommendation

60. The Bills Committee recommends that the Second Reading debate of the Bill be resumed at the LegCo sitting on 23 June 1997.

Advice sought

61. Members are invited to support the recommendation of the Bills Committee at paragraph 60 above.

**Bills Committee on
Independent Police Complaints Council Bill**

Membership List

Hon Zachary WONG Wai-yin (Chairman)
Hon Selina CHOW, OBE, JP
Hon Ronald ARCULLI, OBE, JP
Dr LEONG Che-hung, OBE, JP
Hon CHEUNG Man-kwong
Hon Emily LAU Wai-hing
Hon Eric LI Ka-cheung, OBE, JP
Hon James TO Kun-sun
Hon Christine LOH Kung-wai
Hon CHEUNG Hon-chung
Hon IP Kwok-him
Dr Hon LAW Cheung-kwok
Hon LEE Kai-ming
Hon Bruce LIU Sing-lee
Hon Margaret NG
Hon TSANG Kin-shing

Total : 16 Members

Appendix II to LegCo Paper No. CB(2) 2714/96-97

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

<u>Clause</u>	<u>Amendment Proposed</u>
2	<p>(a) In the definition of "complaint" -</p> <ul style="list-style-type: none">(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," .
	<p>(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</p>

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</p> <p>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

<u>Clause</u>	<u>Amendment proposed</u>
4	<p>(a) In subclause (1)(a), by deleting everything after paragraph (iii) and substituting –</p> <p>“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 ; ”.</p> <p>(b) In subclause 1(b), by deleting “.” and substituting “ ; and”.</p> <p>(c) By adding –</p> <p>“(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.”.</p> <p>(d) By adding –</p> <p>“(1A) Notwithstanding subsection (1), any person who is or has been a member of the police force shall not be</p>

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.

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**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

Comparison of the major proposals in the Administration's public consultation paper issued on 1 March 2002 with the relevant provisions in the Independent Police Complaints Council Bill

Subject	Proposals in the Administration's consultation paper issued on 1 March 2002	Remarks
Definition of complaint	<p>Complaints in respect of the following matters will fall within the definition of complaint -</p> <p>(a) The conduct of any member of the Police Force whilst on duty, or in the execution or purported execution of his duties;</p> <p>(b) The conduct of any member of the Police Force when he is off duty but has revealed his police identity; and</p> <p>(c) Any practice or procedure adopted by the Police Force.</p> <p>Complaints may be made by an aggrieved person, including any person who is not in an official capacity as a member of the Police Force.</p>	<p>Proposals in items (a) and (b) have incorporated the gist of a Committee Stage amendment (CSA) moved by the Secretary for Security (S for S) and carried during the Committee Stage of the Independent Police Complaints Council (IPCC) Bill (the 1996 Bill). The proposal in item (c) is similar to that in the 1996 Bill.</p> <p>This proposal is similar to that in the 1996 Bill.</p>

	<p>A complaint excludes anonymous complaints.</p> <p>A complaint also excludes complaints lodged by someone who claims to be the subject of unjust or unfair action for an alleged contravention of any road traffic related Ordinance or any Ordinance which carries a fixed penalty.</p> <p>If a complaint is about misconduct of a Police officer when enforcing Ordinances in relation to road traffic or issuing fixed penalty tickets, the case will be investigated by the Complaints Against Police Office (CAPO) and subject to the scrutiny of the IPCC.</p>	<p>There is no such provision in the 1996 Bill.</p> <p>This proposal is similar to that in the 1996 Bill.</p> <p>There is no such provision in the 1996 Bill.</p>
<p>Membership</p>	<p>The IPCC will consist of a Chairman, three Vice-Chairmen and not less than eight other members. They will be appointed by the Chief Executive (CE) for a term of two years. The Ombudsman or his representative will be an ex-officio member.</p> <p>Member of the Police Force should not be appointed to the IPCC.</p>	<p>This proposal is similar to that in the 1996 Bill.</p> <p>This proposal reflects a CSA moved by S for S and carried during the Committee Stage of the 1996 Bill.</p>

	<p>Members may be re-appointed by CE when a term expires, and may resign during a term of office. If the Chairman, Vice-Chairman or member cannot exercise his functions because of illness or absence from Hong Kong; or if the office of any one of them is vacant pending a new appointment or re-appointment, CE may appoint another person to act in his place.</p> <p>The Chairman, Vice-Chairman or member may be removed by CE due to permanent incapacity or other sufficient cause.</p> <p>The IPCC may also pay its non-official members such fees and allowances as S for S, after consulting with the Secretary for the Treasury, determines.</p>	<p>This proposal is similar to that in the 1996 Bill.</p> <p>This proposal is similar to that in the 1996 Bill.</p> <p>There is no such provision in the 1996 Bill.</p> <p>Although a CSA moved by Hon James TO to specify that the Governor should appoint at least two Legislative Council (LegCo) Members to the IPCC was carried in 1996, there is no mention in the consultation paper that there will be such a provision in the revised IPCC Bill.</p>
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<p>Meetings</p>	<p>Five members or one-third of the number of members, whichever is the less, shall form a quorum.</p> <p>Every question shall be determined by a majority of votes. If there is an equality of votes, the member presiding shall have a casting vote on top of his ordinary vote. The IPCC will be able to transact its business by circulation of papers. A resolution signed by a majority of members shall be as valid and effectual as if it had been passed at a meeting.</p> <p>If two or more members notify the Secretary in writing that the papers circulated should be discussed at a meeting, the resolution will not be valid and effectual.</p> <p>The IPCC will also be able to appoint committees and delegate any of its functions or powers under the Bill to its committees, the Secretary or other staff of the Secretariat.</p>	<p>This proposal is similar to that in the 1996 Bill.</p> <p>This proposal is similar to that in the 1996 Bill.</p> <p>This proposal reflects a CSA moved by S for S and carried during the Committee Stage of the 1996 Bill.</p> <p>There is no such provision in the 1996 Bill.</p>
<p>Appointment of Secretary and Legal Adviser</p>	<p>The IPCC will be able to appoint a Secretary and a Legal Adviser. The IPCC may delegate to the Secretary such authority as may from time to time be required.</p>	<p>This proposal reflects a CSA moved by S for S and carried during the Committee Stage of the 1996 Bill.</p>

	<p>The Administration also proposes to empower the IPCC to appoint technical, professional or other persons to serve on the Secretariat. To ensure continuity, the IPCC may still be served by civil servants after the passage of the Bill. When it is ready to employ its own staff, the relevant provision will be commenced by notice in the Gazette.</p> <p>The salaries and terms and conditions of appointment of the Secretary, Legal Adviser and the various persons appointed to the Secretariat should be approved by CE.</p>	<p>This proposal reflects a CSA moved by Hon James TO and carried during the Committee Stage of the 1996 Bill.</p> <p>There is no such provision in the 1996 Bill.</p>
Financial arrangements	<p>The expenses of the IPCC and any salary or benefit payable to its employees shall be paid out of moneys appropriated for the purpose by LegCo.</p> <p>The IPCC will be required to keep proper accounts and prepare a statement of the accounts including an income and expenditure account and a balance sheet. It shall also appoint an auditor who shall audit the required accounts and the required statement of accounts and submit a report on the statement to the IPCC.</p>	<p>There are no such provisions in the 1996 Bill.</p>

	<p>The IPCC shall furnish a copy of the statement of accounts and the auditor's report on the statement to CE.</p> <p>CE shall cause the same to be tabled in LegCo. In practice, such statement and auditor's report on the statement may be included as part of the annual report that the IPCC makes to CE.</p>	
Director of Audit's examination	The Director of Audit may conduct an examination into the economy, efficiency and effectiveness with which the IPCC has expended its resources in performing its functions and exercising its powers.	There is no such provision in the 1996 Bill.
Functions	<p>The functions of the IPCC will be -</p> <ul style="list-style-type: none"> (a) To monitor and review the manner in which complaints are handled by the Police; (b) To review the findings of the Police's investigation of complaints; (c) To keep under review statistics compiled by the Police on the types of conduct that lead to complaints; 	The proposed functions are similar to those in the 1996 Bill, except the ones in items (b), (f) and (g). The proposal in item (b) reflects a CSA moved by S for S and carried during the Committee Stage of the 1996 Bill. The proposals in items (f) and (g) were not in the 1996 Bill.

	<ul style="list-style-type: none"> (d) To identify any faults or deficiencies in the procedures adopted by the Police which lead to or might lead to complaints; (e) To make recommendations to the Commissioner of Police (CP), or if the IPCC considers appropriate, to CE regarding the handling and investigation of any complaint; (f) 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; and (g) To keep in view checklists from the Police on the gist of "non-reportable complaints". 	<p>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.</p> <p>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."</p> <p>The Administration proposes an alternative as set out in item (f). 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 if the IPCC is not satisfied with an investigation, it can ask the CAPO to reinvestigate the complaint, or make a report to CE.</p>
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<p>Powers</p>	<p>The IPCC shall have powers -</p> <ul style="list-style-type: none"> (a) To require the Police to submit a report on any complaint; provide any relevant information, file, document or material, including written statements taken from the interviewees during the interviews by the CAPO and videotapes of such interviews; or clarify any fact or discrepancy; (b) To require the Police to investigate or re-investigate any complaint or any matter relating to a complaint; (c) To interview any witness for the purpose of exercising its statutory functions; (d) To require the Police to provide an explanation on any action that has been taken by the Police arising out of a complaint; (e) To require the Police to notify the complainant of the findings and the results of the investigation of his complaint; (f) To require the Police to submit a report on actions taken in respect of the IPCC's recommendations on the handling and investigation of any complaint; 	<p>The proposed powers are similar to those in the 1996 Bill except the ones in items (e), (f), (i) and (j). The proposal in item (e) reflects a CSA moved by S for S and carried during the Committee Stage of the 1996 Bill. The proposal in item (f) reflects a CSA moved by S for S and carried during the Committee Stage of the 1996 Bill. The proposal in item (i) reflects a CSA moved by Hon James TO and carried during the Committee Stage of the 1996 Bill. Item (j) is a new proposal which was not in the 1996 Bill.</p> <p>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".</p>
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	<p>(g) To require the Police to compile and submit statistics of the types of conduct that lead to complaints;</p> <p>(h) To monitor, review or report on any action taken by the Police in respect of a complaint;</p> <p>(i) To require that it be consulted by the Police on significant amendments to be made, regarding the handling or investigation of complaints, to the Police General Orders, Headquarters Orders, Force Procedures Manual, and the Complaints Against Police Office Manual, and may make relevant recommendations;</p> <p>(j) To enter into any contract; and</p> <p>(k) to do all such other acts as are reasonably necessary for the exercise or performance of its statutory powers or duties, or do any other thing which is incidental or conducive to the exercise of its functions.</p> <p>CP will have to comply with the requirement under (a), (b), (d), (e), (f), (g) and (i) unless he is satisfied that compliance with the requirement would likely prejudice the security of Hong Kong or the investigation of any crime.</p>	<p>Although a CSA moved by Hon James TO to empower the IPCC to refer cases to the Attorney General and the Independent Commission Against Corruption was carried at the Committee Stage of the 1996 Bill, there is no mention in the consultation paper that there will be such a provision in the revised IPCC Bill.</p>
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<p>Observers Scheme</p>	<p>To better reflect the existing IPCC Observers Scheme, the revised IPCC Bill will propose that -</p> <ul style="list-style-type: none"> (a) S for S may appoint, for a term of two years, such persons as she thinks fit to observe the manner in which a complaint is handled by the Police. The person so appointed should not be a Government official or a member of the IPCC Secretariat; (b) An IPCC Observer may resign his office by notice in writing to S for S; (c) If an Observer is precluded by illness, absence from Hong Kong or any other cause from exercising his functions, S for S may terminate the appointment; (d) IPCC Observers may attend interviews or investigations in relation to complaints by the Police on a scheduled or surprise basis; 	<p>There is no provision for an Observers Scheme in the 1996 Bill.</p> <p>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. As stated in item (a), the power to appoint such persons rests with S for S, instead of the IPCC.</p>
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	<p>(e) Complainants, complainees and witnesses shall accept the presence of Observers during such interviews and investigations by the Police;</p> <p>(f) Observers shall not interfere with the conduct of interview or investigation by the Police. They are not allowed to pose questions to the interviewer or interviewee, or express any personal views, while the interview or investigation is in progress;</p> <p>(g) Observers may release information acquired in the course of observations to the IPCC only; and</p> <p>(h) The IPCC may pay to IPCC Observers such fees and allowances as S for S, after consulting with the Secretary for the Treasury, determines.</p>	
Procedure and review	The revised IPCC Bill will provide for procedural matters such as the submission of investigation reports by the Police to the IPCC.	This proposal is similar to that in the 1996 Bill.

	<p>The IPCC may request CP to submit an interim report on the progress of investigation within six months from the date of the request and advise CP in writing in relation to any matter referred to in that report.</p> <p>After a complainant has been notified of the results of the Police's investigation of his complaint, he may, within 30 days, request a review of the complaint. A second request for review will only be considered in exceptional circumstances. Refusal to review should be recommended by a directorate Police officer with detailed justifications for the endorsement of the IPCC.</p>	<p>This proposal reflects a CSA moved by S for S and carried during the Committee Stage of the 1996 Bill.</p> <p>There is no such provision in the 1996 Bill.</p>
Interview with witness	<p>Upon receipt of an investigation report from the Police, the IPCC or its members may interview any witness in connection with the complaint. In the case of interim report, the IPCC or its members may also interview any witness with the consent of CP. The Commissioner must give the consent unless he opines that such interview would likely prejudice the investigation of any crime or complaint.</p>	<p>This proposal was in the 1996 Bill with slight modification incorporating a CSA moved by S for S and carried during the Committee Stage of the 1996 Bill.</p>

		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 during the Committee Stage of the 1996 Bill. However, there is no mention in the consultation paper that there will be such a provision in the revised IPCC Bill.
Secrecy	<p>Members of the IPCC and Observers will be required to maintain secrecy in respect of all matters arising from any complaint and coming to their knowledge in the exercise of their functions. However, such requirement should not be applied to prevent any member or Observer from -</p> <p>(a) Disclosing in the course of any criminal, civil or disciplinary proceedings in respect of which a complaint is relevant, any matter relevant to those proceedings;</p> <p>(b) Reporting evidence of any crime to such authority as he considers appropriate; and</p>	This proposal is similar to that in the 1996 Bill.

	<p>(c) Disclosing to a person any matter arising from any complaint which, in the opinion of the member, may be ground for a complaint by that person.</p> <p>The IPCC may disclose in its report any matter which ought to be disclosed in order to establish grounds for its conclusions and recommendations. However, the IPCC cannot disclose such matter which CE certifies that its disclosure might prejudice security, defence or international relations (including relations with any international organisation) in respect of Hong Kong or would otherwise be contrary to the public interest.</p> <p>The IPCC may also disclose the details of complaints during the open part of its meetings, and in the information issued to the media and the public for education and publicity purposes. However, such disclosure shall not be in a manner that the identity of any person aggrieved, any complainant, any Police officer whose action is the subject of the investigation or who is otherwise involved in the investigation can be ascertained from the disclosure.</p>	<p>This proposal is similar to that in the 1996 Bill.</p> <p>There is no such provision in the 1996 Bill.</p>
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		<p>CSAs moved by Hon James TO 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 were carried during the Committee Stage of the 1996 Bill. However, there is no mention in the consultation paper that there will be such a provision in the revised IPCC Bill.</p>
<p>Protection to members</p>	<p>An IPCC member or Observer shall have such and the like protection and privileges in case of any action or suit brought against him for any act done or omitted to be done in the execution of his duty as is by law given to any magistrate acting in the execution of his office.</p> <p>For the purposes of the law of defamation, absolute privilege shall be attached to the discussion in meetings and the publication of reports on individual complaint cases. No IPCC member, Observer, its committee or Secretariat staff shall be personally liable for any act done or default made by the IPCC or its committee acting in good faith in its course of operations.</p>	<p>This proposal is similar to that in the 1996 Bill.</p> <p>There is no such provision in the 1996 Bill.</p>

Report	The IPCC shall in each year make a general report to CE concerning the exercise of its statutory functions during the previous year. Besides, it may make other reports to CE as it deems necessary. CE shall cause the annual report from the IPCC to be laid before LegCo.	This proposal is similar to that in the 1996 Bill. A CSA moved by S for S to provide that the Governor cause IPCC reports other than its annual report to be laid before LegCo was carried in 1996. However, there is no mention in the consultation paper that there will be such a provision in the revised IPCC Bill.
Power to make regulations	The IPCC will be empowered to make regulation in consultation with CE. Regulations made may provide for the discharge of its statutory functions and duties; the IPCC being assisted by such other persons and classes of persons as may be prescribed, in the exercise and performance of its functions and duties; any other matters required by or under the Bill; and generally the carrying out of the provisions of the Bill so long as any regulation made does not contravene the generality of those powers and functions given to the IPCC under the Bill.	This proposal has incorporated a CSA moved by Hon James TO and carried during the Committee Stage of the 1996 Bill.

Time limit	The Police shall not normally undertake or continue an investigation into a non sub-judice complaint if it is not made within 24 months from the date of incident. The Police shall not normally undertake or continue an investigation into a sub-judice complaint if it is not made within 12 months from the date of conclusion of proceedings or 24 months from the date of incident, whichever represents a longer period. The Police may undertake or continue an investigation of a complaint lodged beyond the above time limits if the IPCC recommends it to do so in the case of complaints of a serious nature.	There is no such provision in the 1996 Bill.
Complaints not made in good faith	The revised IPCC Bill proposes to empower CP to decide not to undertake or continue an investigation into a complaint, if he is of the opinion, having regard to all the circumstances of the case, that the complaint is frivolous or vexatious or is not made in good faith.	There is no such provision in the 1996 Bill.

Council Business Division 2
Legislative Council Secretariat
29 April 2002