

For information  
on 6 June 2006

## **Legislative Council Panel on Security**

### **Proposal to establish the Independent Police Complaints Council as a statutory body**

#### **Purpose**

This note sets out the main legislative proposals to establish the Independent Police Complaints Council (IPCC) as a statutory body.

#### **Background**

2. The police complaints system dates back to 1977. Under the existing system, the Complaints Against Police Office (CAPO) of the Police is responsible for handling and investigating public complaints against the Police. The investigations are monitored and reviewed by the IPCC to ensure that the complaints are fairly and impartially handled. The IPCC also monitors CAPO's investigations directly through the Observers Scheme under which IPCC Members and Lay Observers can observe the interviews and scene visits conducted by CAPO during investigations. The Observers will forward their comments to the IPCC for follow-up actions with CAPO.

3. To provide a statutory basis for and to enhance public confidence in the present system, we have been working on the proposal to convert the IPCC into a statutory body. We conducted a public consultation exercise from 1 March to 12 April 2002 on our proposals.

#### **Results of public consultation exercise and views of the IPCC**

4. We presented the following main results of the public consultation exercise to the Panel on Security at its meeting on 10 July 2002 -

- (a) an overwhelming majority of the consultees supported turning the IPCC into a statutory body;

- (b) a number of consultees expressed their satisfaction with the existing police complaints system and clear support for the Administration's legislative proposals. Many others indicated their agreement with some of the proposals and suggested modifications to others. Only a small number of consultees rejected the legislative proposals outright;
  - (c) amongst those who had commented on the issue of investigative powers, some supported the status quo, i.e. that CAPO should continue to conduct investigations. Other supported investigative powers for the IPCC; and
  - (d) comments were also received on the operation of the IPCC and the Observers Scheme, matters relating to their appointment and publicity of the police complaints system.
5. The then Chairman of the IPCC also attended the Panel meeting on 10 July 2002 and expressed the IPCC's views as follows -
- (a) IPCC Members unanimously agreed that public confidence in the IPCC and the police complaints system would be enhanced if the IPCC was established as a statutory body;
  - (b) the majority of IPCC Members were of the view that it was important for investigating and monitoring work to remain separate and the IPCC should maintain its role as a monitoring and reviewing body in the police complaints system;
  - (c) the IPCC had a wider range of powers to closely scrutinize and "investigate" the process and manner in which CAPO handled complaints. Such powers included gaining access to information, interviewing witnesses, ordering CAPO to re-investigate complaints, raising queries, and making recommendations to the Commissioner of Police (CP) and the Chief Executive (CE); and
  - (d) the IPCC considered that the Observers Scheme was useful in assisting the IPCC to monitor CAPO's investigation work. The IPCC would examine the feasibility and implementation of measures to improve the Scheme.

## **Legislative proposals**

6. Having regard to results of the public consultation exercise and the IPCC's views, we have refined the legislative proposals. The salient elements of our current proposals are set out in the ensuing paragraphs.

### The IPCC's functions

7. The proposed functions of the IPCC are as follows -
- (a) to observe, monitor and review the manner in which complaints are handled or investigated by the Police and to make recommendations in respect of the handling or investigation of complaints to the CP or, if the IPCC considers appropriate, to the CE;
  - (b) to monitor disciplinary actions taken or to be taken in respect of a member of the police force by the CP in connection with any reportable complaint and to advise the CP or, if the IPCC considers appropriate, the CE of its opinion on such actions;
  - (c) to identify any faults or deficiencies in practices or procedures adopted by the Police which lead to or might lead to complaints and to make recommendations in respect of such practices or procedures to the CP or, if it considers appropriate, to the CE;
  - (d) to review anything submitted to the IPCC by the Police; and
  - (e) to promote public awareness of the role of the IPCC.

### The IPCC's powers

8. We propose to give the following powers to the IPCC to discharge its functions -

- (a) to require the Police to submit reports on complaints, provide information or materials relating to complaints, including written statements taken from persons interviewed by the Police and video records of the interviews, and clarify the facts or discrepancies;
- (b) to require the Police to investigate or re-investigate complaints;

- (c) to interview persons who may be able to provide information or other assistance to the IPCC in considering the Police's investigations;
  - (d) to require the Police to provide explanations in relation to any disciplinary actions taken or to be taken in respect of a member of the police force;
  - (e) to require the Police to notify complainants or persons making complaints on behalf of the affected persons of the results of the investigation of the complaints;
  - (f) to require the Police to compile and submit to the IPCC statistics of the types of conduct of members of the police force that has led to complaints;
  - (g) to require the Police to submit to the IPCC reports on any actions taken or to be taken by the Police in respect of the IPCC's recommendations; and
  - (h) to require the Police to consult the IPCC on any proposed new or proposed significant amendments to police orders or manuals relating to the handling or investigation of complaints to enable the IPCC to make recommendations as it sees fit.
9. Ancillary powers include charging fees for the IPCC's publications, acquisition of property and entry into contracts.

#### The Police's obligations

10. The Police will be required to, upon completion of investigation of complaints, submit to the IPCC investigation reports containing the findings of facts and supporting evidence, classifications of the complaints and the reasons for the classifications, actions taken or to be taken by the Police and other relevant information. If the Police have not completed the investigation within six months after the date of receipt of the complaints, they shall submit to the IPCC interim investigation reports explaining the progress of the investigation and the reasons for not being able to complete the investigation within six months.

#### Observers Scheme

11. The purpose of the Scheme is to assist the IPCC to observe the

manner in which the Police handle or investigate complaints. Observers may attend any interviews conducted by the Police or observe the collection of evidence undertaken by the Police. They should then report to the IPCC on whether they consider that the interviews or collection of evidence have been conducted or undertaken fairly and impartially, and the particulars of any irregularities detected in respect of the interviews or collection of evidence. All IPCC Members may act as Observers in addition to others who may be appointed as such.

### Other provisions

#### (i) Making of complaints

12. Complaints in respect of the following matters will be covered -
- (a) the conduct of any member of the police force while on duty or in the execution or purported execution of his duties;
  - (b) the conduct of any member of the police force who identified himself as such a member while off duty; or
  - (c) any practice or procedure adopted by the police force.<sup>Note</sup>

13. Complaints may be made by persons directly affected by the conduct, practice or procedure mentioned above; or by parents, guardians or relatives as appropriate on behalf of affected persons who are below the age of 16 years, mentally incapacitated or unable to make the complaints due to death or illness; or by persons authorized by the affected persons in writing.

#### (ii) Appointment of IPCC members and proceedings

14. The IPCC will be incorporated as a body corporate consisting of a Chairman, three Vice-Chairmen and not less than eight other members appointed by the CE for a term of not exceeding two years. The Ombudsman or his representative will be an ex-officio member. Members of the police force are not eligible for appointment to the IPCC.

15. There will be provisions governing the IPCC's meetings and procedures, e.g., the quorum of meetings, declaration of interest and

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<sup>Note</sup> Complaints arising from the issue of any notice for the imposition of a fixed penalty under any Ordinance are not included. Such complaints are dealt with by other existing complaints systems.

determination of matters by votes. Essentially, apart from laying down the main principles, we will seek to allow the IPCC to determine its own administrative procedures to perform its functions.

(iii) Appointment of Secretary, Legal Adviser and other employees

16. The IPCC may appoint a Secretary, a Legal Adviser and such other employees as it requires to assist it to perform its functions. The IPCC may also engage the services of technical and professional persons as it thinks fit.

(iv) Financial arrangements

17. The resources of the IPCC will consist of money paid by the Government to the IPCC and appropriated for the purpose by LegCo, and other money and property (e.g. fees, gifts, donations and interest) received by the IPCC. The IPCC is required to prepare a statement of accounts and balance sheet for each financial year, to be audited by a qualified auditor appointed by the IPCC. The IPCC shall submit to the CE an annual report on its performance of its functions, a copy of the statement of accounts and the auditor's report on the statement, and cause these documents to be tabled in LegCo upon the CE's approval.

18. 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.

(v) Miscellaneous provisions

19. There will be provisions governing, for example, the immunity of IPCC members, the safeguarding of confidential information and transitional arrangements.

**Way forward**

20. The Administration is now in the process of consulting the IPCC on the detailed drafting of the bill. Once that is completed, we aim to introduce the bill into the Legislative Council as soon as possible.