

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

Draft Committee Stage Amendments

Amendments to be moved by the Secretary for Security

<u>Clause</u>	<u>Amendment Proposed</u>
Long title	(a) By deleting "of observing and" and substituting "in". (b) In the Chinese text, by deleting "須具報" where it twice appears and substituting "須匯報".
1	In the Chinese text, by deleting "投訴警方獨立監察" and substituting "獨立監察警方處理投訴".
New	By adding - "1A. Commencement This Ordinance shall come into operation on a day to be appointed by the Secretary for Security by notice published in the Gazette."
2(1)	(a) In the definition of "categorization" - (i) in the Chinese text, in paragraph (a), by deleting "須具報" and substituting "須匯報";

- (ii) in paragraph (b), by deleting "non-reportable" and substituting "notifiable".
- (b) In the definition of "classification" -
 - (i) by deleting paragraphs (a) to (e) and substituting -
 - "(a) substantiated;
 - (b) substantiated other than reported;
 - (c) not fully substantiated;
 - (d) unsubstantiated;
 - (e) false;
 - (f) no fault;
 - (g) withdrawn;
 - (h) not pursuable;
 - (i) curtailed;
 - (j) informally resolved; or
 - (k) of such other description as agreed between the Council and the Commissioner;"
 - (ii) in the Chinese text, by deleting "須具報" and substituting "須匯報".
- (c) In the definition of "Council", by deleting everything after "body corporate" and substituting "established by section 3".
- (d) By deleting the definition of "non-reportable complaint" and substituting -
 - "notifiable complaint" (須知會投訴) means a

complaint categorized as a notifiable

complaint in accordance with section 13;".

- (e) By deleting the definition of "reportable complaint" and substituting -

"reportable complaint" (須匯報投訴) means -

(a) a complaint categorized as a reportable complaint in accordance with section 10; or

(b) a request for review treated as a reportable complaint in accordance with section 12;".

- (f) In the definition of "Secretary" -

(i) by deleting "Secretary" where it twice appears and substituting "Secretary-General";

(ii) by deleting "(秘書)" and substituting "(秘書長)".

- (g) In the Chinese text, in the definition of "覆核要求", by deleting "須具報" and substituting "須匯報".

- (h) By adding -

"material" (材料) includes any document or record in any form and any article or substance;".

By adding -

"(3) In sections 7(1)(b), 18(1)(e), 24 and

37(2A)(b), a reference to any action taken or to be taken in respect of a member of the police force includes a decision that no action be taken against that member."

Part 2 In the heading, in the Chinese text, by deleting "投訴警方獨立監察" and substituting "獨立監察警方處理投訴".

3 By deleting subclause (1) and substituting -

"(1) There is hereby established a body corporate known as -

(a) "Independent Police Complaints Council" in English; and

(b) "獨立監察警方處理投訴委員會" in Chinese."

4 By deleting subclause (2) and substituting -

"(2) The following persons are not eligible for appointment under subsection (1) -

(a) a person who holds an office of emolument, whether permanent or temporary, in a Government bureau or department; and

(b) a person who was a member of the police force."

- 5 In the heading, by deleting "**Secretary**" and substituting "**Secretary-General**".
- 5(1) (a) By deleting "Secretary" and substituting "Secretary-General".
- (b) By adding "of employment" after "terms".
- 5(2) By adding "of employment" after "terms".
- 7(1) (a) In paragraph (a), by deleting "manner in which reportable complaints are handled or investigated" and substituting "handling and investigation of reportable complaints".
- (b) In paragraph (b), in the Chinese text, by deleting "須具報" and substituting "須匯報".
- (c) In paragraph (c), in the Chinese text, by deleting "須具報" and substituting "須匯報".
- 8(1) (a) In paragraph (a), in the Chinese text, by deleting "須具報" and substituting "須匯報".
- (b) In paragraph (b), by deleting "non-reportable" and substituting "notifiable".
- 8(2) In the Chinese text, by deleting "須具報" and substituting "須匯報".

- 8(3)
- (a) In paragraph (a), by deleting "non-reportable" and substituting "notifiable".
 - (b) In paragraph (b), by deleting "non-reportable" and substituting "notifiable".
 - (c) By deleting paragraph (c) and substituting -
"(c) in relation to a belated complaint (as defined in section 11(3)) that is not categorized as a reportable complaint solely on the ground that the complaint is not of a serious nature, the reasons supporting that ground."

- 9
- (a) By deleting everything before paragraph (a) and substituting -

"9. Excluded complaints

A list under section 8(1)(a) or (b) must exclude any complaint that -".

- (b) In paragraph (b), by deleting "and does not relate to police conduct" and substituting "and solely relates to the question of whether the summons is validly issued".
- (c) In paragraph (c), by deleting "and does not relate to police conduct" and substituting "and solely relates to the question of whether the notice is validly issued".

- 10
- (a) In the heading, in the Chinese text, by deleting "須具報" and substituting "須匯報".
 - (b) In paragraph (a)(i), by adding ", whether or not he identified himself as such a member" after "duties".
 - (c) In paragraph (b), by deleting "in the opinion of the Commissioner,".
 - (d) In the Chinese text, by deleting "須具報" and substituting "須匯報".

11 By deleting the clause and substituting -

"11. Categorization of belated complaints

(1) Except as provided in subsection (2), a belated complaint must not be categorized as a reportable complaint.

(2) A belated complaint must be categorized as a reportable complaint if -

- (a) it is serious in nature; and
- (b) but for subsection (1), it would be categorized as a reportable complaint in accordance with section 10.

(3) In this section, "belated complaint" (逾期投訴) means a complaint that is made to the

Commissioner after the expiration of -

- (a) 24 months from the date of the incident giving rise to the complaint; or
- (b) (where proceedings relating to the subject matter of the complaint have been commenced in any court, magistracy or statutory tribunal within the period referred to in paragraph (a)) 12 months from the date of the final determination of such proceedings,

whichever is later."

12 In the heading, in the Chinese text, by deleting "須具報" and substituting "須匯報".

- 12(1)
- (a) By deleting "A request" and substituting "Subject to subsection (3), a request".
 - (b) By deleting "the Commissioner is of the opinion that".
 - (c) In the Chinese text, by deleting "須具報" where it twice appears and substituting "須匯報".

12 By adding -

"(3) A request for review must not seek for

the review of a reportable complaint that is classified as "informally resolved".

13 By deleting the clause and substituting -

"13. Complaints categorized as notifiable complaints

A complaint received by the Commissioner must be categorized as a notifiable complaint if it is neither a reportable complaint nor a complaint excluded under section 9."

15(1) (a) By deleting "the list of non-reportable" and substituting "a list of notifiable".

(b) In the Chinese text, by deleting "為須具報" and substituting "為須匯報".

15(3) By deleting everything after "the Commissioner to provide" and substituting -

"-

(a) explanations to support the categorization of a complaint as a notifiable complaint;

(b) in relation to a belated complaint (as defined in section 11(3)) that is not categorized as a reportable complaint solely on the ground

that the complaint is not of a serious nature, explanations to support that ground; and

- (c) information or material in support of the explanations."

Part 3,
Division 2

In the heading, in the Chinese text, by deleting "須具報" and substituting "須匯報".

16

In the heading, in the Chinese text, by deleting "須具報" and substituting "須匯報".

16(1)

In the Chinese text, by deleting "須具報" and substituting "須匯報".

16(2)

(a) In paragraph (d), by deleting "and".

(b) In paragraph (e) -

(i) by deleting "other";

(ii) by deleting the full stop and substituting "; and".

(c) By adding -

"(f) such other information as the Commissioner and the Council may agree."

16

By deleting subclause (3) and substituting -

"(3) An investigation report on a reportable complaint classified as informally resolved must -

(a) contain -

- (i) a summary of the process of informal resolution of the complaint;
- (ii) an account of the incident giving rise to the complaint as described by the complainant;
- (iii) (if the complainee is identified) an account of the incident giving rise to the complaint as described by the complainee;
- (iv) an account of the action taken or to be taken by the Commissioner in connection with the complaint;
- (v) such information as the Commissioner thinks necessary; and
- (vi) such other information as the Commissioner and the Council may agree; and

(b) explain the reasons for resolving the complaint by informal resolution.

(4) In subsections (1) and (2), a reference to an investigation report includes an investigation report supplementary to a previous investigation report."

17 In the heading, in the Chinese text, by deleting "須具報" and substituting "須匯報".

17(1) In the Chinese text, by deleting "須具報" and substituting "須匯報".

17(3) (a) By deleting "explain".
(b) In paragraph (a), by adding "contain a summary of" before "the progress".
(c) In paragraph (b), by adding "explain" before "the reasons".

17(4) By deleting "the explanation given under subsection (3)" and substituting "an interim investigation report".

18(1) (a) By deleting paragraph (a).
(b) In paragraph (d), by deleting "or" at the end.

(c) In paragraph (e), by deleting the full stop and substituting a semicolon.

(d) By adding -

"(f) its recommendation on the report other than those mentioned in paragraphs (b), (c) and (d).".

18

By adding -

"(1A) If an investigation report is amended in response to the Council's recommendations referred to in subsection (1), the Commissioner must submit the report as amended to the Council as soon as practicable.".

19(3)

(a) By adding "reasonably" before "of the opinion".

(b) In the Chinese text, by deleting "有可能" and substituting "相當可能會".

19

By deleting subclause (8) and substituting -

"(8) Despite subsections (5) and (7)(c) but without prejudice to subsection (6), a person interviewed by the Council has the right to be accompanied by his solicitor or counsel at an interview under this section.".

19

By deleting subclause (9).

New

By adding immediately after clause 19 -

"19A. Record of interview

(1) The Council must make a record of every interview under section 19, and the record is to be kept for such period as may be necessary for the performance of its functions under this Ordinance.

(2) The record may be used for the following purposes but not otherwise -

- (a) a purpose that is necessary for the performance of the Council's functions under this Ordinance;
- (b) a purpose referred to in section 37(2)(b), (c) or (d).

19B. Council's endorsement of classification

If the Council is satisfied with the classification of a reportable complaint as stated in an investigation report submitted under section 16 or 18(1A), the Council must endorse the classification and notify the Commissioner the endorsement."

Part 3,
Division 3

In the heading, in the Chinese text, by deleting "須具

報" and substituting "須匯報".

20 In the heading, in the Chinese text, by deleting "須具報" and substituting "須匯報".

20(1) (a) In paragraph (a), by deleting everything after "relating to a reportable complaint," and before "video" and substituting -
"including but not limited to -

(i) any written statement taken from a person interviewed by a member of the police force in respect of a reportable complaint; and

(ii) any".

(b) In paragraph (b), by deleting "or discrepancy" and substituting ", discrepancy or findings".

21 In the heading, in the Chinese text, by deleting "須具報" and substituting "須匯報".

21(1) In the Chinese text, by deleting "須具報" and substituting "須匯報".

21(2) (a) By adding "subject to section 12(2)," after "then,".

(b) In the Chinese text, by deleting "如有關須具報" and substituting "如有關須匯報".

(c) In paragraph (a), in the Chinese text, by deleting "須具報" wherever it appears and substituting "須匯報".

(d) In paragraph (b), in the Chinese text, by deleting "須具報" where it twice appears and substituting "須匯報".

22 (a) By deleting the heading and substituting -
**"22. Notification of classification
of reportable complaint and
result of review".**

(b) By renumbering the clause as clause 22(1).

22(1) (a) By deleting "The Council may require the Commissioner to inform" and substituting "In the case of a reportable complaint that is not a request for review, the Commissioner must, as soon as practicable after the Council has endorsed the classification of the complaint under section 19B, notify".

(b) In the Chinese text, by deleting "須具報" where it twice appears and substituting "須匯報".

By adding -

"(2) In the case of a reportable complaint that is a request for review, the Council must notify -

(a) the complainant; or

(b) (where the reportable complaint was made by a person on behalf of the complainant) the person who made the complaint,

of the result of the review.

(3) Subsections (1) and (2) do not apply to a case where the complainant or the person has indicated to the Commissioner or the Council that he does not wish to be so notified.

(4) In determining the time at which the complainant or the person is notified of such matters as required under subsection (1) or (2), the following provisions apply -

(a) if the notification is left at his address, the notification is effected when it is so left;

(b) if the notification is sent by post to his address, the notification is effected when it would in the ordinary course of post be delivered to that

address;

(c) if the notification is sent by facsimile transmission to his facsimile number, the notification is effected when it would in the ordinary course of such transmission be received at that number; or

(d) if the notification is sent by electronic mail transmission to his electronic mail address, the notification is effected when it would in the ordinary course of such transmission be received at that address.

(5) In subsection (4), references to his address, his facsimile number or his electronic mail address mean the address, facsimile number or electronic mail address (as the case may be) provided by the complainant or the person to the Commissioner or the Council as a means of contacting him in relation to the reportable complaint."

23(1) (a) In paragraph (a), in the Chinese text, by deleting "須具報" and substituting "須匯報".

(b) In paragraph (b), in the Chinese text, by deleting "須具報" and substituting "須匯報".

24 (a) In the heading, in the Chinese text, by deleting "須具報" and substituting "須匯報".

(b) In the Chinese text, by deleting "須具報" and substituting "須匯報".

25(a) In the Chinese text, by deleting "須具報" and substituting "須匯報".

26 In the heading, in the Chinese text, by deleting "須具報" and substituting "須匯報".

26(1) (a) By deleting everything before "Council may require" and substituting -
"(1) The".

(b) In paragraph (a), in the Chinese text, by deleting "須具報" and substituting "須匯報".

(c) In paragraph (b), in the Chinese text, by deleting "須具報" and substituting "須匯報".

27 By renumbering the clause as clause 27(1).

27(1) By deleting everything after "unless" and

substituting -

"the Secretary for Security certifies that compliance with the requirement would be likely to prejudice -

- (a) the security of Hong Kong; or
- (b) the investigation of any crime."

27 By adding -

"(2) A certificate signed by the Secretary for Security certifying the matter referred to in subsection (1)(a) or (b) is conclusive evidence as to the matter so certified."

28 By deleting "from time to time".

29 (a) By adding "reasonable" before "fees".

(b) In the Chinese text, by adding "複製本或" before "文本".

31 By deleting subclause (2) and substituting -

"(2) The following persons are not eligible for appointment as observers -

- (a) a person who holds an office of emolument, whether permanent or temporary, in a Government bureau or department;

- (b) the Secretary-General, the Legal Adviser or any other employee of the Council; and
- (c) a person who was a member of the police force."

32 In the Chinese text, by deleting "須具報" and substituting "須匯報".

New By adding -

"33A. Prior notification of interview and collection of evidence

(1) In so far as practicable, the Commissioner must, before he conducts -

- (a) an interview in respect of a reportable complaint; or
- (b) any collection of evidence in the investigation of a reportable complaint,

notify the Council of the interview or collection of evidence.

(2) The notification must set out -

- (a) the nature of the allegations contained in the reportable complaint;
- (b) the date, time and place of the

interview or collection of
evidence and the form in which it
will be conducted; and

- (c) the particulars of the interviewee
and the interviewer.

(3) If the Commissioner has conducted an
interview or any collection of evidence referred
to in subsection (1) ("the incident") without
prior notice to the Council, the Commissioner
must, as soon as practicable after the incident
and in writing -

- (a) notify the Council of the
incident;
- (b) explain to the Council the reasons
why such prior notice has not been
given; and
- (c) provide to the Council information
that would have been required to
be set out, under subsection (2),
in a notification in respect of
the interview or collection of
evidence if such prior notice had
been given."

- 34(1) (a) In paragraph (a), in the Chinese text, by
deleting "須具報" and substituting "須匯報".

(b) In paragraph (b), in the Chinese text, by deleting "須具報" and substituting "須匯報".

34(3) (a) By deleting "comes to the knowledge of" and substituting "appears to".

(b) In the Chinese text, by deleting "須具報" and substituting "須匯報".

35 By renumbering the clause as clause 35(1).

35(1) (a) In paragraph (a), in the Chinese text, by deleting "須具報" and substituting "須匯報".

(b) In paragraph (b), in the Chinese text, by deleting "須具報" and substituting "須匯報".

35 By adding -

"(2) For the avoidance of doubt, a duty roster under subsection (1)(c) does not affect an observer's right under section 34(1) to attend an interview or observe the collection of evidence at any time."

36 In the definition of "specified person" -

(a) in paragraph (c), by deleting "Secretary" and substituting "Secretary-General";

(b) in the Chinese text, in paragraph (f), by adding "任何" before "身分".

37(2)(b) By adding "or any suspected crime" after "crime".

37 By adding -

"(2A) For the avoidance of doubt, in making a disclosure under subsection (2)(a), the Council may disclose to the public -

(a) the facts of any disagreement between the Council and the Commissioner on the findings or classification of a reportable complaint; or

(b) its opinion on the action taken or to be taken in respect of a member of the police force by the Commissioner in connection with a reportable complaint."

37(4) (a) In paragraph (a), by deleting everything after "a specified person" and substituting "as defined in section 36 (other than paragraph (f) of that definition);".

(b) By adding -

"(ba) a person who has written authorization from

the complainant -

(i) to make a complaint or request for review on behalf of the complainant (as provided in section 14); or

(ii) to handle in the complainant's stead the complaint or request for review made by the complainant;".

(c) In paragraph (d), by deleting "or" at the end.

(d) By deleting paragraph (e) and substituting -

"(e) a person whom the Council invites to an interview pursuant to section 19 or any person who is present at an interview in accordance with that section; or".

(e) By adding -

"(f) the Chief Executive.".

40(3) By deleting "is required to be done and".

New By adding -

"40A. Pre-existing legal claims

Without limiting section 40, a legal claim (including any judicial and administrative proceedings) -

(a) by or against the former Council; and

(b) existing immediately before the

commencement date,

does not abate by reason of the commencement of this Ordinance."

41(2) By adding "1A(b) or" after "under section".

41 By adding -

"(2A) A person who, immediately before the commencement date, is the Secretary or the Legal Adviser of the former Council continues to be, as from that date, the Secretary-General or the Legal Adviser (as the case may be) of the Council on the same terms and conditions as those applicable to that person immediately before that date."

41(3) By deleting "including" and substituting "other than".

42 (a) In paragraph (a), in the Chinese text, by deleting "須具報" and substituting "須匯報".

(b) In paragraph (b), by deleting "non-reportable" and substituting "notifiable".

(c) In paragraph (c), in the Chinese text, by deleting "須具報" and substituting "須匯報".

(d) In paragraph (d), by deleting "non-reportable" and substituting "notifiable".

43 In the Chinese text, by deleting "投訴警方獨立監察" and substituting "獨立監察警方處理投訴".

Schedule 1 By adding immediately before section 1 -

"1A. **Term of office of Chairman**

The Chairman (other than a person appointed under section 4) -

- (a) is to be appointed for a term not exceeding 3 years; and
- (b) is eligible for reappointment for a further term or terms not exceeding 3 years each."

Schedule 1, (a) In the heading, by deleting "**Chairman**".
section 1

(b) By deleting "The Chairman, a" and substituting "A".

Schedule 1, By deleting "Secretary" and substituting "Secretary-
section General".
6(5)

Schedule 1, By adding -
section 7

"(3) The Council may, by its procedure determined under section 12, make provisions for a Vice-Chairman to appoint, in the absence of the Chairman, the time and place for the Council to

meet."

Schedule 1 By deleting section 10.

Schedule 1, (a) In subsection (4), by adding "and section 11A(4)"
section 11 after "subsection (5)".

(b) In subsection (5), by deleting "Secretary" and substituting "Secretary-General".

(c) By deleting subsection (6).

Schedule 1 By adding -

"11A. Disclosure of interest

(1) If a member of the Council has an interest in a matter being discussed or to be discussed at a meeting of the Council, the member -

(a) must disclose the nature of his interest at or before the meeting;

(b) must withdraw from the meeting during the discussion of the matter;

(c) must not vote on a resolution concerning the matter; and

(d) must not be counted for the purpose of forming a quorum.

(2) If the disclosure is made by the member

presiding the meeting, the member must vacate the chair during the discussion of the matter.

(3) If the member must vacate his chair under subsection (2), the other members present at the meeting must appoint, by a majority, one of their number to preside the meeting when the chair is so vacated.

(4) In the case of a written resolution on a matter in which a member of the Council has an interest -

(a) the member -

(i) must state the nature of his interest in the papers being circulated; and

(ii) must return the papers with his interest so stated to the Secretary-General; and

(b) the member -

(i) must not vote on the written resolution; and

(ii) must not be counted in calculating a majority for the approval of the written resolution.

(5) A disclosure made under subsection (1)(a) or (4)(a) must be recorded by the

Council.".

Schedule 1, section 12 By deleting everything after "own procedure" and substituting a full stop.

Schedule 1, section 13 By adding "from amongst its members" before "establish".

Schedule 1 By deleting section 14.

Schedule 1, section 16 (a) In subsection (4), by adding "and section 16A(4)" after "subsection (5)".

(b) In subsection (5), by deleting "Secretary" and substituting "Secretary-General".

(c) By deleting subsection (6).

Schedule 1 By adding -

"16A. Disclosure of interest

(1) If a member of a committee has an interest in a matter being discussed or to be discussed at a meeting of the committee, the member -

(a) must disclose the nature of his interest at or before the meeting;

(b) must withdraw from the meeting during the discussion of the

matter;

(c) must not vote on a resolution concerning the matter; and

(d) must not be counted for the purpose of forming a quorum.

(2) If the disclosure is made by the member presiding the meeting, the member must vacate the chair during the discussion of the matter.

(3) If the member must vacate his chair under subsection (2), the other members present at the meeting must appoint, by a majority, one of their number to preside the meeting when the chair is so vacated.

(4) In the case of a written resolution on a matter in which a member of the committee has an interest -

(a) the member -

(i) must state the nature of his interest in the papers being circulated; and

(ii) must return the papers with his interest so stated to the Secretary-General; and

(b) the member -

(i) must not vote on the written resolution; and

(ii) must not be counted in
calculating a majority for
the approval of the written
resolution.

(5) A disclosure made under subsection
(1)(a) or (4)(a) must be recorded by the
committee."

Schedule 1, By adding "(as may be reasonable in the
section
23(1) circumstances)" after "period".

Schedule 1, By deleting "Secretary" and substituting "Secretary-
section
25(1) General".