

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

Draft Committee Stage Amendments for Clauses 15 - 35

INDEPENDENT POLICE COMPLAINTS COUNCIL BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for Security

<u>Clause</u>	<u>Amendment Proposed</u>
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)."

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".

20(2) By deleting everything before "means a" and
substituting -

"(2) In this section -

"material" (材料) includes any document or record
in any form and any article or substance;
"video recording" (錄影紀錄)".

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 notify".

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

22

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) 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".

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."