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

Purpose

This paper reports on the deliberations of the Bills Committee on Independent Police Complaints Council Bill.

Background

2. At present, the Independent Police Complaints Council (IPCC) is an independent advisory body responsible for monitoring and reviewing investigations by the Complaints Against Police Office (CAPO) into public complaints against members of the police force. IPCC comprises members of the community appointed by the Chief Executive (CE), including a Chairman, three Vice-chairmen and 14 non-official members. It is supported by a full-time secretariat staffed by civil servants.

3. On 10 July 1996, the Administration introduced into the Legislative Council (LegCo) an IPCC Bill (the 1996 Bill) to make IPCC a statutory body and to provide for a legal basis for IPCC to discharge its functions of monitoring and reviewing investigations by CAPO. A Bills Committee was formed to study the 1996 Bill. At the beginning of the proceedings for Third Reading, the then Secretary for Security (S for S) withdrew the 1996 Bill.

4. The Administration conducted a public consultation exercise from 1 March to 12 April 2002 on its revised legislative proposals. Taking into account the results of the public consultation exercise and the views of IPCC, the Administration drew up a new Bill to convert the existing IPCC into a statutory body.

The Bill

5. Introduced into LegCo on 11 July 2007, the Bill seeks to incorporate the existing IPCC as a body corporate and to provide for its functions, powers and operation.

The Bills Committee

6. At the House Committee meeting on 5 October 2007, Members formed a Bills Committee to study the Bill. The membership list of the Bills Committee is in **Appendix I**.

7. Under the chairmanship of Hon LAU Kong-wah, the Bills Committee has held 30 meetings (comprising 39 two-hour sessions) with the Administration. The Bills Committee has also met with the existing IPCC and five organizations, and received written submissions from five other organizations/individual. The names of these organizations/individual are listed in **Appendix II**.

Deliberations of the Bills Committee

Police complaints system

8. Under the existing police complaints system, CAPO is responsible for handling and investigating public complaints against members of the police force. The investigations into reported complaints are monitored and reviewed by IPCC to ensure that the complaints are fairly and impartially handled. Some members support maintaining the status quo. On the other hand, some members and some deputations consider that a statutory entity, independent of both the Police and IPCC, should be established to investigate complaints against members of the police force.

9. Hon Emily LAU has also pointed out that in its Concluding Observations made on 30 March 2006, the United Nations Human Rights Committee (UNHCR) remains concerned that the investigation of police misconduct are still carried out by the Police itself through CAPO, and that IPCC does not have the power to ensure proper and effective investigation of complaints nor power for effective implementation of its recommendations. UNHRC recommends that the Hong Kong Special Administrative Region should ensure that the investigation of complaints against the Police is carried out by an independent body, the decisions of which are binding on relevant authorities. She has queried whether the Administration has any plan to comply with the recommendation of UNHCR.

10. The Administration has responded that CAPO operates separately from other police formations to ensure its impartiality in handling complaints lodged by members of the public against members of the police force. IPCC is an independent civilian oversight body specifically appointed to monitor and review CAPO's handling and investigation of police complaints. Members of IPCC are drawn from a wide spectrum of the community on the basis of their ability, expertise and commitment to public service. To underline IPCC's independence, an IPCC Secretariat operating as a separate

government department has been established to provide full-time support to IPCC in carrying out its monitoring and review functions.

11. The Administration considers that there are effective checks and balances to ensure that the complaints lodged with CAPO are handled thoroughly, fairly and impartially. The Administration has explained that CAPO prepares detailed investigation reports on all reportable complaints for submission to IPCC. IPCC rigorously examines the reports. If IPCC members have doubts about a particular investigation, they may interview the complainant, the complainee(s) and the witness(es). IPCC can also request CAPO to submit for its reference any documents or information relevant to a reportable complaint. In discharging their duties, IPCC members may observe CAPO's investigations in person, on either surprise or scheduled visits. If IPCC is not satisfied with the result of a CAPO investigation, it can ask CAPO to clarify or reinvestigate the complaint. It may also bring the case to the attention of CE, together with recommendations as to its disposition. IPCC has adequate means to ensure that the investigation of all reportable complaints lodged with CAPO is conducted properly and effectively.

12. IPCC also monitors CAPO's investigation directly through its Observers Scheme under which IPCC members and some 78 lay observers can undertake scheduled or surprise observation of the interviews and collection of evidence conducted by CAPO during its investigation of complaints. The observers will report to IPCC their comments on whether the interviews or collection of evidence have been conducted in a fair and impartial manner as well as any irregularities detected.

13. In the view of the Administration, the existing two-tier system has been operating effectively. The police complaints system, as codified in the Bill, is appropriate and proportionate to the Administration's objective of ensuring that public complaints against members of the police force are handled fairly and impartially. The Administration has no plan at this stage to establish another independent body to investigate complaints lodged by members of the public against the Police.

Long title of the Bill

14. Hon James TO and Hon Audrey EU consider that the long title of a bill should reflect the main purpose of the bill. In line with the normal drafting practice to reflect the important aspects of the bill and as a substantial part of IPCC's functions, it is logical to contain a reference to the review function of IPCC in the long title of the Bill. Hon James TO has queried the need for including "to provide for the appointment of observers in relation to reportable complaints". He is of the view that the long title as presently drafted will restrict the room for Members to move Committee Stage amendments (CSAs) to the Bill, given that in considering whether a Member may move CSA, the President of LegCo may, among others, have regard to the long title of the Bill.

15. The Administration has explained that the long title gives a general indication of the contents of the Bill. As the provisions on the Observers Scheme constitute a substantial part of the Bill (clauses 31 to 35 and Schedule 2), it is appropriate to make reference to this aspect in the long title. The Administration therefore considers it appropriate to retain "to provide for the appointment of observers in relation to reportable complaints" in the long title.

16. The Administration is also of the view that the long title is not meant to repeat the various aspects of the functions of IPCC as stipulated in the Bill. Clause 7 of the Bill provides, *inter alia*, that the functions of IPCC are to "observe, monitor and review the manner in which reportable complaints are handled or investigated by the Commissioner" and "to review anything submitted to it by the Commissioner pursuant to this Ordinance". Such review functions of IPCC are part and parcel of its general function of "observing and monitoring the handling and investigation of reportable complaints" as mentioned in the long title. In the view of the Administration, the existing long title has aptly and sufficiently covered the IPCC's review power as well as its other powers specified in various clauses of the Bill which enable it to carry out its general function of observing and monitoring the handling and investigation of reportable complaints. Taking into account members' comments, the Administration will delete "of observing" in the long title, since "monitoring" is sufficiently broad to cover "observe" and "review".

17. Hon James TO has proposed CSAs to the long title of the Bill.

Renaming of Independent Police Complaints Council

18. In response to members' suggestion to amend the Chinese version of "Independent Police Complaints Council" in the Bill, the Administration has consulted the existing IPCC which prefers to adopt the name "獨立監察警方處理投訴委員會" so as to reflect its role in monitoring the Police's handling and investigation of complaints against members of the police force. The existing IPCC considers that its existing English name can be retained. The Administration will introduce a CSA to reflect the change in Chinese name.

19. With the change in the Chinese name of IPCC, members have suggested that the Chinese version of "Council" ("警監會") should be changed to "監警會". The IPCC Secretariat has informed the Bills Committee that the existing IPCC prefers to continue to use "警監會". The Administration accepts members' suggestion and will amend the relevant clauses accordingly.

Categorization of complaints (clauses 2, 10 and 11)

Definitions of "reportable complaint" and "non-reportable complaint"

20. Under clause 2(1) of the Bill, "categorization" means the categorization by the Commissioner of Police (CP) of a complaint as a reportable complaint or a non-reportable complaint. Members have pointed out that the terms "reportable complaint" and "non-reportable complaint" are not easily understood by members of the public, and the term "non-reportable complaint" may give an impression that such complaints are not required to be reported to IPCC.

21. In view of members' suggestion to substitute the two terms with layman terminology, the Administration proposes to replace the Chinese term of "reportable complaint" ("須具報投訴") by "須匯報投訴", while retaining the English term of "reportable complaint" as it accurately conveys the meaning that the Police must submit a report on such complaints to IPCC. As for "non-reportable complaint" ("無須具報投訴"), the Administration proposes to replace it by "notifiable complaint" ("須知會投訴") (the new terms will be used hereunder). The relevant amendments will be made by the Administration.

22. Having considered members' comments on the provisions on the categorization of "reportable complaint" and "notifiable complaint", the Administration will revise the definitions and clause 13 to bring out the basis of the categorization in clearer terms.

Reportable complaint

23. Under clause 10(b) of the Bill, a complaint received by CP must be categorized as a reportable complaint if the complaint, in the opinion of CP, is not vexatious or frivolous and is made in good faith. Under clause 11(b), a complaint may not be categorized as a reportable complaint unless, though made to CP after expiry of the period specified in the clause, in the opinion of CP, the complaint is of a serious nature. Clause 12(1) provides, *inter alia*, that a request for review made to CP for reviewing the classification of a reportable complaint is to be treated as a reportable complaint only if CP is of the opinion that the request for review is not vexatious or frivolous and is made in good faith.

24. Some members have suggested empowering IPCC to determine whether a complaint is of a serious nature, and deleting "in the opinion of the Commissioner" in clause 10(b). The Administration will introduce CSAs to delete "in the opinion of the Commissioner" in clauses 10(b) and 11(b) and "the Commissioner is of the opinion" in clause 12(1) to better reflect the legislative intent that IPCC may provide its opinion on whether a complaint is vexatious or frivolous or made in good faith, and whether a belated complaint is of a serious nature. The Administration will also amend clause 11

to expressly provide that a belated complaint must be categorized as a reportable complaint if it is serious in nature.

25. Regarding the scope of clause 10(a)(iii) of the Bill, the Administration has explained that a complaint received by the Police must be categorized as a reportable complaint if the complaint relates to any practice or procedure adopted by the police force and if the other criteria of a reportable complaint are met. This means that a complaint made by a member of the public personally aggrieved by any police practice or procedure, irrespective of whether such practice or procedure is documented, will be categorized as a reportable complaint if the other criteria of a reportable complaint are also met. The clause properly reflects the existing practice.

26. Some members have suggested that a complaint relating to the conduct of a member of the police force believed to be on duty but has not identified himself as such a member should be included as a reportable complaint.

27. The Administration has explained that if CAPO receives a complaint from a personally aggrieved party relating to the conduct of a member of the police force believed to be on duty but who had not identified himself as such a member, it will ascertain the facts of the case and verify whether the complainee is actually a member of the police force. If such verification confirms that the complainee is a member of the police force and hence the complaint is covered under clause 10(a)(i), and the complaint satisfies the other provisions under clause 10, it will be categorized as a reportable complaint. The Administration will introduce a CSA to clause 10(a)(i) to make it clear that such a complaint against a member of the police force, whether or not the complainee has been identified as such a member will be categorized as a reportable complaint.

Amendments proposed by Hon James TO

28. Hon James TO has proposed CSAs to broaden the scope of reportable complaints in clause 10(a) to cover the conduct of a member of the police force who abused information obtained in his capacity as a member of the police force while off duty; when discharging his duty through an agent; and who identified himself as such a member indirectly while off duty. As the term "directly affected person" in clause 10(c) is too narrow, Hon James TO has also proposed CSAs to include a complaint made by or on behalf of a complainant indirectly affected by the police conduct to be categorized as a reportable complaint.

29. Hon James TO has proposed CSAs in connection with belated complaints to be categorized as reportable complaints.

Definition of "member of the police force" (clause 2)

30. Under clause 2(1) of the Bill, "member of the police force" includes a public officer attached to the police force. Members have enquired about the coverage of "member of the police force" and whether the term covers Forensic Pathologists and contractors engaged by the Police.

31. The Administration has explained that "police force" is defined in the Bill as "the Hong Kong Police Force or the Hong Kong Auxiliary Police Force established under the Hong Kong Auxiliary Police Force Ordinance (Cap. 233)". "Public officer" is defined in section 3 of the Interpretation and General Clauses Ordinance (Cap. 1) as "any person holding an office of emolument under the Government, whether such office be permanent or temporary". Taking into account these provisions, a member of the police force covers -

- (a) police officers of all ranks of the Hong Kong Police Force and auxiliary police officers of all ranks of the Hong Kong Auxiliary Police Force;
- (b) civilian staff of the police departmental grade; and
- (c) other civilian staff of the Government working in the Hong Kong Police Force.

The definition adequately covers all public officers working in the police force against whom complaints made by personally aggrieved members of the public will be monitored by IPCC. This reflects the existing practice.

32. The Administration has advised that Forensic Pathologists provide forensic services to the police force as and when necessary, as well as to the Hospital Authority and other government departments. They are staff of the Department of Health and do not hold any established posts in the police force, and hence are not members of the police force. Any complaint received by the Police against a forensic pathologist will be referred to the Department of Health for follow-up actions. Contractors whose service are engaged by the Police by way of a contractual relationship do not fall within the definition of "member of the police force". Depending on the circumstances of the case, whether an individual case involving a contractor of the police force or an employee of a contractor of the police force is a complaint against the Police will be considered on a case-by-case basis. For example, a complaint against police operational matters will be dealt with as a complaint against the Police. Where appropriate and with the complainant's agreement, a complaint against the manner or conduct of an employee of a contractor of the police force will be referred to the contractor.

33. Regarding members' suggestion to amend the definition of "member of the police force" with reference to the establishment of the police force, the Administration

has explained that the establishment of the police force does not cover staff employed on non-civil service contract terms and who should be regarded as members of the police force. As such, the Administration considers that the definition in the Bill should be retained.

Classification of a reportable complaint (clauses 2, 12 and 16)

34. Under clause 2(1) of the Bill, "classification" means the classification after investigation by CP of a reportable complaint as one that is -

- (a) for informal resolution;
- (b) substantiated;
- (c) unsubstantiated;
- (d) withdrawn; or
- (e) of such other description as agreed between IPCC and CP.

35. The existing IPCC considers that under the present framework, "for informal resolution" should not be regarded as a category of classification as cases resolved by "informal resolution" have not been fully investigated, and are not subject to review. It is therefore misleading to include this in the definition of "classification". As reference to "informal resolution" has also been made in clause 16 which obliges CP to submit an investigation report as soon as practicable after completing the investigation of a reportable complaint, while the classification of a reportable complaint is subject to a request for review under clause 12(1), it would be appropriate to exclude "for informal resolution" from the definition of "classification".

36. The existing IPCC has also pointed out that cases classified as "withdrawn" are not subject to review pragmatically, though unlike "informal resolution" cases, some investigation may have been conducted before such findings are reached. If a complainant decides to pursue the complaint, or new evidence that enables the continuation of an investigation comes to light, the investigation would normally be re-opened. To avoid confusion, the existing IPCC considers that "withdrawn" should be removed from the definition of "classification". Reference to "informal resolution" should also be removed from clause 16.

37. The Administration has advised that "informal resolution" cases are cases where the Police resolves the complaints with the complainants through conciliation without requiring a full investigation. "Withdrawn" cases are cases where the complainants do not wish to pursue the complaints made. Under the existing police complaints system, "informal resolution" and "withdrawn" cases constitute two separate classifications of reportable complaints on which CAPO submits reports to IPCC in line with the handling procedure for reportable complaints of other classifications (e.g.

"substantiated", "substantiated other than reported", "not fully substantiated", "false" etc.).

38. The Administration has further advised that under clause 16(3) of the Bill, the requirement for an investigation report to be submitted to IPCC to contain a summary of the investigation (clause 16(2)(a) refers), and a finding of facts in relation to the complaint and the evidence in support of the finding (clause 16(2)(b) refers) does not apply to an investigation report on a reportable complaint classified as one that is for "informal resolution". This reflects the fact that the complaint has been resolved through conciliation with the complainant without requiring a full investigation. The Police is, nevertheless, required to submit reports on these cases to IPCC so that IPCC can monitor the way in which these cases have been handled by CAPO. As "informal resolution" and "withdrawn" cases are reportable complaints subject to IPCC's monitoring and review, the Administration considers it appropriate for these two classifications to be covered by the definition of "classification" under clause 2(1), and to oblige the Police to submit reports on these cases to IPCC under clause 16.

39. The Administration has also explained that police complaints may be dealt with by "informal resolution" only if certain criteria are met. One of the criteria is that the complainant agrees to this approach. In addition, "informal resolution" cases are dealt with on a final basis between the complainants and the Police, and a request for review will not be entertained.

40. The existing IPCC has pointed out that the difference between its views and those of the Administration on the status of "informal resolution" lies in the definition of "investigation" in the provisions. Unless "investigation" is extended to cover the preliminary steps taken prior to informally resolving a complaint, it would not be valid to consider "for informal resolution" a classification, i.e. result of investigation, in clause 2(1). In fact, "for informal resolution" is not regarded as a result of investigation in the CAPO Manual, and only represents a way of handling minor complaints. Reports on such cases are not termed as "investigation reports". To provide a statutory basis for "informal resolution" cases, the existing IPCC has suggested that clause 16(3) be amended to stipulate that CP must submit a report to IPCC on such cases, which are distinguished from investigation reports in clause 16(1) and (2).

41. The Administration has responded that "informal resolution" cases are reportable complaints subject to IPCC's monitoring, on which the Police are required to submit investigation reports in accordance with clause 16. The preliminary steps taken prior to informally resolving a complaint, such as making an initial assessment on the suitability of the complaint to be dealt with by "informal resolution" and obtaining descriptions of the event concerned from the complainant and complainee(s), are regarded as part of the investigation process. For any inconsistency in the terminology used in the Bill and the CAPO Manual, the Police will amend the CAPO Manual accordingly. Given the foregoing, the Administration considers that clause 16(3) should remain as currently drafted.

42. To reflect the existing practice and taking into account the comments of members, the Administration will amend the definition of "classification" in clause 2(1) to list out all the existing classifications, and to amend clause 12 to expressly provide that a request for review must not seek for the review of a reportable complaint that is classified as "informally resolved".

43. The Administration has also informed members of the current practice that for reportable complaints classified as "withdrawn" (where the complainant does not wish to pursue the complaint made) and "not pursuable" (where the identity of the complainees cannot be ascertained or where it has not been possible to obtain the cooperation of the complainant to proceed with the complaint investigation, e.g. when the complainant declines to make a statement), the complainants may reactivate their complaints upon a change of mind or any other reasons. CAPO will handle such reactivated complaints as fresh complaints rather than requests for review.

44. Some members have suggested requiring staff of IPCC to explain to a complainant before a complaint is to be resolved by "informal resolution".

45. The Administration has explained that "informally resolved" cases involve minor reportable complaints which are resolved, with the consent of the complainant, through conciliation without a full investigation. An officer not involved in the complaint concerned, at the rank of Chief Inspector of Police, will be appointed as the conciliating officer. He will interview the complainant, and explain to the complainant the procedure involved in informal resolution and the implications of adopting this approach. He will also make it clear that if at any stage the complainant does not agree to proceed with the informal resolution procedure, the complaint will be formally investigated. The complainant will be invited to sign an interview form to confirm his understanding of such explanation. As a complaint will be handled by informal resolution only with the complainant's clear understanding of the procedures involved and his agreement to adopting such an approach, the Administration considers the existing arrangement adequate and does not see a need to additionally require the staff of IPCC to provide similar explanation to the complainant.

Membership of Council (clause 4 and Schedule 1)

Composition

46. Clause 4 of the Bill provides that the proposed statutory IPCC will consist of a Chairman, three Vice-chairmen and not less than eight other members. All these persons are to be appointed by CE.

47. Some members have suggested providing in the Bill that LegCo Members to be appointed to IPCC should be elected among LegCo Members, and allowing non-government organizations to nominate candidates for appointment to IPCC by CE.

These members have also suggested specifying in the Bill that some IPCC members should come from certain specific sectors or possess expertise in certain areas, e.g. persons with management experience, criminal litigation expertise and social workers. In addition, they and some deputations have suggested that representatives of non-government organizations and vulnerable groups such as ethnic minorities and sex workers be appointed to IPCC, and the criteria for appointing IPCC members should be transparent.

48. The Administration has responded that appointments to IPCC are made on an *ad personam* basis. In making such appointments, the Administration is guided by the principle of selecting the best person for the job, having regard to the functions and nature of business of IPCC, and an individual's integrity, ability, experience, expertise and commitment to public service. The Administration will continue to observe this principle in making appointments to the statutory IPCC. To facilitate the IPCC's effective discharge of its functions, in considering appointments to IPCC, the Administration will also have regard to a potential candidate's background to ensure a balanced composition of IPCC, and to avoid any real or perceived conflict of interest. During the appointment process, the Administration will give careful considerations to all potentially suitable candidates, including self-nominated candidates and any candidates put forward to the Administration on recommendation. With these, the Administration does not consider there to be a need to stipulate in the Bill the specific sectors from which IPCC members should be drawn.

49. Hon James TO has proposed the following CSAs -

- (a) to provide for the composition of IPCC to include members with expertise or experience in certain areas;
- (b) to provide for the Commissioner of the Independent Commission Against Corruption (ICAC) or his representative and The Ombudsman or her representative as ex-officio members of IPCC;
- (c) to provide that a person who is the immediate family member of a member of the police force is not eligible for appointment as an IPCC member; and
- (d) to provide for the appointment of the IPCC Chairman to be approved by LegCo, and two of the three Vice-chairmen (who are LegCo Members) to be elected among LegCo Members.

Term of office

50. Under section 1 of Schedule 1 to the Bill, the Chairman, a Vice-Chairman or an appointed member will be appointed for a term not exceeding two years and is eligible for re-appointment for a further term or terms not exceeding two years each.

51. To maintain continuity, some members and some deputations have suggested that a longer term of office for IPCC Chairman and members should be adopted. They have also suggested that IPCC Chairman should be appointed on a full-time basis, given the heavy caseload of complaints (2 542 and 2 751 reportable complaints in 2006 and 2007 respectively).

52. The Administration has responded that in making appointments and re-appointments to IPCC, the Administration takes into account such factors as the performance of individual members during their term of office, the need to maintain continuity and the need to inject new blood to ensure a healthy turnover of members. The Administration intends to continue appointing IPCC members in compliance with the six-year and the six-board guidelines (i.e. a person will not be appointed to more than six advisory and statutory bodies and will not sit on such a body for more than six years in the same capacity). Nevertheless, the Administration has agreed to introduce CSAs to provide for a term not exceeding three years for the IPCC Chairman while observing the aforementioned guideline.

53. The Administration has advised that the Bill provides for a minimum number of members of IPCC. IPCC will be supported by its Secretary, Legal Adviser and other staff. There will also be a pool of observers to assist IPCC to monitor the Police's investigation of complaints by observing the interviews or collection of evidence conducted by the Police. These arrangements should adequately enable IPCC to perform its statutory functions. Should the workload increase in future, consideration could be given to appointing more members to IPCC. In the view of the Administration, a full-time IPCC Chairman is not considered necessary as it will unnecessarily shrink the pool of possible candidates. Many existing statutory bodies, such as the Hong Kong Trade Development Council, the Urban Renewal Authority and the Consumer Council, do not have full-time chairmen.

54. Hon James TO has proposed CSAs to provide for a term of the IPCC Chairman and a Vice-chairman to be three years.

Acting appointment

55. Under section 4 of Schedule 1, CE may appoint any person to act as an appointed member of IPCC. Members have queried the need for such a provision, and suggested that the provision should be deleted and the definition of "appointed member" (which includes an acting member) in clause 2(1) should be amended accordingly.

56. The Administration has responded that to cater for the possible need to appoint an acting IPCC member as set out in section 4 of Schedule 1 (i.e. an IPCC member may be precluded by illness, absence from Hong Kong or any other cause from performing his functions, or the office of an IPCC member is vacant pending a new appointment or re-appointment), the provision should be retained and the definition of "appointed member" in clause 2(1) should be kept. The Administration has pointed out that the governing Ordinances of many existing statutory bodies contain provisions on the appointment of acting or temporary member. Examples are the Consumer Council, the Hong Kong Arts Development Council, the Airport Authority, the Legal Aid Services Council, the Financial Reporting Council, the Hong Kong Trade Development Council and the Hong Kong Productivity Council.

Removal of Chairman, Vice-chairmen and members

57. Section 3 of Schedule 1 provides for the removal of Chairman, Vice-Chairmen and appointed members of IPCC by CE. Some members consider that the circumstances constituting sufficient cause for removal should be set out in the Bill. They also consider that CE should not exercise his removal power arbitrarily and suggest that a provision should be added to this effect.

58. The Administration has responded that it will be difficult to set out exhaustively all the circumstances that constitute sufficient cause. Provisions similar to section 3 of Schedule 1 are also found in other legislation. While CE will not exercise his removal power arbitrarily, it is not appropriate to add such a stipulation to the Bill.

Appointment of Secretary, Legal Adviser and other employees (clause 5)

59. Under clause 5(1) of the Bill, IPCC must appoint a Secretary and a Legal Adviser on terms approved by CE on the advice of IPCC.

60. Some members have raised query as to why it is necessary for the terms of the Secretary and Legal Adviser of IPCC to be approved by CE. Given the independent status of the statutory IPCC, these members consider that the requirement for approval by CE should be deleted. They are also concerned as to whether IPCC is required to seek CE's approval on the terms for the two posts before identifying the suitable candidates.

61. From the viewpoint of ensuring that public money allocated to IPCC is properly used, the Administration considers it appropriate to maintain clause 5(1) as currently drafted. The Administration has pointed out that the appointment of the executive heads of many existing statutory bodies and the terms and conditions of their appointment are subject to the approval of CE. Examples include the Consumer Council, the Urban Renewal Authority and the Hong Kong Trade Development Council. Taking into account members' suggestion, the Administration will introduce CSAs to clause 5 to expressly provide for the terms of employment of the Secretary and

Legal Adviser of IPCC to be approved by CE on the advice of IPCC. The Administration stresses that IPCC enjoys the discretion and flexibility in selecting suitable candidates for the two positions. It is up to IPCC to decide whether to seek CE's approval of the terms of employment before identifying candidates.

62. Hon James TO has proposed CSAs to provide for IPCC to appoint its Secretary and Legal Adviser on terms approved by IPCC.

63. Regarding the suggestions of the existing IPCC that the Secretary to IPCC should be retitled as "Executive Director" and should be a member of IPCC, the Administration has explained that the existing IPCC Secretary is responsible to the IPCC Chairman and members for the overall administration of the IPCC Secretariat and for providing IPCC with effective support in monitoring the Police's handling of complaints against members of the police force. As the main functions of the existing IPCC Secretary are to provide administrative service and support to IPCC and to execute the directions of IPCC, and the Secretary to the statutory IPCC is expected to continue to carry out similar functions as an employee of IPCC, the Administration does not envisage that there are any practical needs to appoint the Secretary as a member of the statutory IPCC. The Administration is agreeable to the Bills Committee's suggestion of amending the title of the IPCC Secretary as Secretary-General (秘書長), which appropriately reflects the nature of the duties of the post. The relevant CSAs will be made by the Administration.

Functions of Council (clause 7)

64. One of the functions of IPCC is to monitor actions taken or to be taken in respect of any member of the police force by CP in connection with reportable complaints, and to advise, as IPCC considers appropriate, CP or CE or both of them of its opinion on such actions. This is provided in clause 7(1)(b).

65. While accepting that it is CP's prerogative to discipline or administer other administrative actions on a member of the police force, the existing IPCC has expressed concern about CP's overall response to its recommendations arising from the monitoring of a reportable complaint. The existing IPCC considers that clause 7(1)(b) should be amended to allow IPCC to give recommendations on CP's action taken or to be taken in connection with any reportable complaint which may not be covered by clause 7(1)(a) or (c), e.g. the training needs of police officers, service improvement suggestions, the terms of a reply to a complainant, but excluding disciplinary action on which IPCC will give its opinion. Consequentially, clause 24, which allows IPCC to require CP's explanation for his action taken or to be taken in respect of a member of the police force should also be amended to cover CP's other actions in connection with any reportable complaint.

66. The Administration has responded that clause 7(1)(c) as currently drafted enables IPCC to make recommendations in respect of faulty or deficient police practices or procedures. Depending on the circumstances of individual cases, the Administration envisages that if IPCC is to make recommendations on the training needs of police officers or service improvement, it should have identified a faulty or deficient police practice which may lead to reportable complaints. Clause 7(1)(c) should sufficiently enable IPCC to make recommendations on the Police's training needs or service improvement for better compliance with police procedures and carrying out duties more professionally. If IPCC has any views on the training needs of individual police officers, it may advise CP of its opinion in this regard under clause 7(1)(b). IPCC may make recommendations on the terms of a reply to a complainant under clause 7(1)(a).

67. The Administration has also advised that clause 24 empowers IPCC to require CP to provide an explanation in relation to any action taken or to be taken in respect of a member of the police force by CP in connection with any reportable complaint. Clause 25(b) empowers IPCC to require CP to submit a report on any action taken or to be taken in respect of the IPCC's recommendations made under clause 7(1)(a) or (c). In the view of the Administration, clauses 7(1)(a), (b) and (c), 24 and 25(b) in combination should be sufficient to meet the existing IPCC's concerns.

68. The existing IPCC has pointed out that advice on service quality improvements may not necessarily arise from a fault or deficiency in police practices or procedures as captured by clause 7(1)(c). The advice may merely serve to enhance the Police's professionalism with a view to avoiding possible complaints and earning the public's recognition. The existing IPCC maintains the view that clause 7(1)(b) should be amended.

69. The Administration has responded that the dictionary meaning of "deficiency" is "the state of being short of, less than, what is correct or needed". If IPCC has any recommendation on service quality improvements of the Police, an existing police practice or procedure "short of what is needed" will in practice be identified. Clause 7(1)(c) should be able to serve the purpose of empowering IPCC to make recommendations on how the Police's service quality can be improved.

70. Hon James TO has proposed CSAs in respect of the functions of IPCC, including the amendment to provide that the objective of IPCC is to prevent the abuse of power by the police force, and the amendment to the effect that the promotion of public's concern about the monitoring of handling of complaints against the Police is a function of IPCC.

Investigative power

71. Some members and some deputations are of the view that IPCC should be empowered to conduct independent investigations if it is not satisfied with CAPO's

investigation findings, and to determine the acceptability of the findings and results of the investigation of all complaints. This would enhance public's confidence in the police complaints system. Some other members consider it appropriate to keep IPCC as a monitoring body without vesting any investigative power in it.

72. The Administration has responded that the main functions of IPCC are to monitor and review the handling and investigation of complaints against the Police conducted by CAPO. The Bill codifies a wide range of powers currently available to IPCC to enable it to closely scrutinize the process and manner in which CAPO handles complaints for discharging its functions. If IPCC is not satisfied with the result of CAPO's investigation into a reportable complaint, it can ask CAPO to clarify any doubts or to reinvestigate the complaint. The Administration considers it inappropriate to confer IPCC with investigative power on the grounds that -

- (a) IPCC does not have powers similar to those available to the Police, e.g. the search and seizure powers, or the necessary expertise and knowledge for investigating complaints which often involve allegations of breaches of police discipline or procedures or of criminal law. This would adversely affect the quality of IPCC's investigations;
- (b) IPCC would need to have its own investigation team, in addition to the investigation complement in CAPO. This would result in an overlapping of resources and duplication of efforts. The cost-effectiveness of giving investigative power to IPCC is in doubt; and
- (c) empowering IPCC to investigate complaints lodged with CAPO would confuse the IPCC's role as an oversight body. This arrangement might create two different sets of findings and results in respect of a complaint, and hence cause confusion. In contrast, under the established practice, IPCC and CAPO will seek to reach a consensus on the classification of a reportable complaint through discussions.

73. In the view of the Administration, the existing two-tier complaints system has been operating effectively and smoothly. The current arrangement under which CAPO investigates the complaints it receives and IPCC reviews and monitors CAPO's investigations should be maintained.

74. Hon James TO has proposed CSAs to provide IPCC with investigative power.

Making complaints or request for review on behalf of complainant (clause 14)

Complaint lodged by a person other than the directly affected person

75. Some members consider that a complaint lodged by any person who is not the directly affected person should be allowed and it should be categorized as a reportable

complaint. They have pointed out that ICAC will investigate complaints not lodged by the directly affected person.

76. The Administration has responded that the Police accept a crime report made by a person who is not the directly affected person in the same way ICAC accepts a report on corruption offence made by such a person. As for whether a complaint against a member of the police force not made by the directly affected person is categorized as a reportable complaint, clause 14 of the Bill provides that representatives may make a complaint against a member of the police force on behalf of a complainant under a variety of circumstances. Specifically, clause 14(1)(c) allows a representative to make a complaint on behalf of a complainant if he has a written authorization from the complainant. This arrangement has provided for sufficient flexibility to enable a third party to make a complaint on behalf of an aggrieved person. From a practical point of view, allowing any third party (including one without any authorization of the directly affected person) to file a complaint may not have taken into account the wish and privacy of the directly affected person who may then be required to disclose information which he could otherwise not be willing to disclose. Without the full cooperation of the directly affected person in providing accurate and comprehensive information for the Police to investigate the complaint, it would be difficult for the Police to draw up a full and fair report on the complaint and impracticable for IPCC to observe, monitor and review whether the Police has handled the complaint impartially.

77. The Administration has informed members that a complaint filed by an individual other than the directly affected person or a representative as defined in clause 14 (subject to clause 9 of the Bill) will be categorized as notifiable complaint. Despite this categorization, CAPO will look into the facts of the case, refer it to the relevant police formation for further follow-up as appropriate. In sum, every complaint received by the Police will be processed with care through the appropriate channel. There is no question of any member of the public being denied an opportunity to lodge a complaint with the Police or any complaint lodged with the Police being left unattended to.

78. Hon James TO has proposed CSAs to specify that a relative, stepfather, stepmother or *de facto* guardian may lodge a complaint on behalf of a person aged under 16. Having considered the amendments proposed by Hon James TO, the Administration will incorporate his amendments by covering "relative" in clause 14(1)(a) and apply the interpretation of "relative" and deduction of relationship in clause 14(2) and (3) to clause 14(1)(a).

Complaints made by mentally incapacitated persons

79. Under clause 14 of the Bill, if a complainant is a mentally incapacitated person, his relative or guardian may make the complaint on behalf of the complainant. Members have enquired how the Police determines whether a person is mentally incapacitated and whether there is any requirement for documentary proof, and how the

Police handle complaints made by persons who are representatives of mentally incapacitated persons.

80. The Administration has explained that clause 2(1) of the Bill defines "mentally incapacitated person" as "a person who is mentally disordered or mentally handicapped within the meaning of the Mental Health Ordinance (Cap. 136)". Under the existing practice, the Police will judge whether a complainant is a mentally incapacitated person in accordance with the definitions set out in section 2 of the Mental Health Ordinance. There is no requirement in the Ordinance for documentary proof in defining mentally disordered person or mentally incapacitated person. It is for the complainant's representative to substantiate that he is a relative or guardian of the complainant so that his complaint made on behalf of the complainant will be treated as a reportable complaint in accordance with clause 14. While at present there are no detailed written guidelines on the handling of complaints made by persons who are representatives of mentally incapacitated persons, the Police will draw up such guidelines.

Submission of investigation or interim investigation reports on reportable complaints (clauses 16 and 17)

81. Clauses 16 and 17 require CP to submit, in respect of a reportable complaint, an investigation report upon completion of the investigation and, if applicable, interim investigation reports to IPCC. To reflect the current practice, the existing IPCC considers that a provision requiring CP to submit amended investigation reports in response to the IPCC's recommendations and supplementary investigation reports to cover review results and/or new allegations should be added.

82. The Administration has advised that the Police will continue with the current practice to submit amended investigation reports to address questions from IPCC on investigation reports and supplementary reports if requests for review recommend a change in the result of investigation. Under clause 25(b), IPCC may require CP to submit to it a report on any action taken or to be taken by CP in respect of a recommendation of IPCC made under clause 7(1)(a) or (c). This already covers amended investigation reports. Clause 12(1) specifies that a request for review is to be treated as a reportable complaint. It follows that the Police will be required to submit an investigation report on a request for review in accordance with clause 16. This covers supplementary reports. As such, although the terms "amended investigation reports" and "supplementary reports" are not specifically provided for in the Bill, the Bill has already preserved the current practice of the Police submitting these reports to IPCC. Nevertheless, the Administration has agreed to add provisions under clauses 16 and 18 to expressly provide for the Police's submission of amended investigation reports and supplementary investigation reports to IPCC.

83. Under clause 16(2)(e), an investigation reported must contain such other information as CP thinks necessary. Some members have suggested amending the

clause along the lines of "such other information as the Council thinks necessary" or "such other information as the Council and the Commissioner may agree".

84. The Administration has responded that clause 16(2) sets out the contents of an investigation report on a reportable complaint submitted by CP to IPCC, which reflects the current practice and covers all necessary information to facilitate IPCC in monitoring the Police's handling and investigation of reportable complaints. Clause 20(1)(a) further empowers IPCC to require CP to provide any information or material relating to reportable complaints. Having regard to members' suggestions and the provisions in clause 16 and 20, the Administration will add a new provision in clause 16(2) to provide that an investigation report contains such other information as IPCC and CP may agree.

85. Some members consider that clause 16(3) should be amended to the effect that an investigation report on a reportable complaint classified as one that is for "informal resolution" must contain a summary of the process of informal resolution, a record of the facts in relation to the complaint and the information in support of resolving the complaint by "informal resolution". The Administration will introduce CSAs to this effect.

86. Clause 17(1) provides that if the investigation of a reportable complaint is not completed within six months from the date of receipt of the complaint or such shorter period as CP and IPCC may agree, CP must, as soon as practicable after the expiry of those six months or that shorter period, submit to IPCC an interim investigation report.

87. According to the Administration, it is the Police's performance pledge to complete investigation of a reportable complaint within four months. In 2007, the investigation of 94% of 2 751 reportable complaints was completed within the pledged period and interim reports of 209 complaints cases were submitted to IPCC. Hon James TO considers that "six months" should be substituted by "four months" in the clause to reflect the Police's pledge.

88. Some members however share the view of the Administration to allow flexibility for the Police so that for cases that may be completed in say, five months, it will not be necessary to submit an interim investigation report to IPCC. They consider that the stipulation of "six months" in the clause is appropriate.

89. Hon James TO has proposed a CSA to substitute "six months" with "four months" in clause 17(1).

Council's opinion on interim investigation reports (clause 17 (3) and (4))

90. Under clause 17 (3) and (4), IPCC may advise CP of its opinion on the explanation given in an interim investigation report on the progress of investigation of a reportable complaint and the reasons for not being able to complete the investigation

within a specified period. The existing IPCC has pointed out that in practice, there are matters other than the progress and reasons for the prolonged investigation on which IPCC may wish to give its observations, e.g. the categorization of an allegation as a notifiable complaint. In its view, the provision should be amended to cover these other matters.

91. The Administration has responded that clause 17(4) should be adequate in empowering IPCC to monitor the progress of the investigation. Together with the general provision under clause 7(2) that IPCC may do all such things that are reasonably necessary for, or incidental or conducive to, the performance of its statutory functions, IPCC is adequately empowered to provide its opinion on CAPO's interim investigation reports as it considers necessary for discharging its monitoring and review functions.

92. The Administration has also advised that clause 17 covers submission of interim investigation reports on reportable complaints to IPCC. For notifiable complaints, CAPO will include them in the list of notifiable complaints to be regularly submitted to IPCC in accordance with clause 8(1)(b). IPCC's power to monitor the categorization of notifiable complaints are provided for under clause 15. As such, the Administration does not consider it necessary to amend clause 17(4) to cover categorization of notifiable complaints.

93. The Administration has taken on board members' suggestion to amend clause 17(3) to the effect that an interim investigation report must contain a summary of the progress of the investigation and explain the reasons for not being able to complete the investigation within the six months' period or such shorter period covered by the report; and to amend clause 17(4) to the effect that IPCC may advise CP of its opinion on an interim investigation report.

Council's opinion or recommendation on investigation report (clause 18)

94. Clause 18(1) provides that IPCC may, in relation to an investigation report submitted under clause 16, advise CP of its recommendations on the report, the classification of the complaint, the Police's handling or investigation of the complaint, or any fault or deficiency identified in any practice or procedure adopted by the Police as well as its opinion on the action taken or to be taken in respect of a member of the police force by CP in connection with the complaint.

95. In response to members' suggestion of providing IPCC with a general power to make recommendations and give opinion in respect of an investigation report submitted by the Police under clause 16, the Administration will make modifications to clause 18(1).

96. Members have enquired about the disciplinary procedures after a complaint is found substantiated and how IPCC may give its opinion during the process. They have suggested that disciplinary proceedings on a police officer should only be conducted after IPCC has completed its review on the complaint.

97. The Administration has explained that CAPO submits a Discipline and Criminal Checklist, which sets out disciplinary actions taken or to be taken in respect of any member of the police force in connection with reportable complaints, to IPCC on a bi-monthly basis. For cases involving giving advice or warning to the officers concerned, such disciplinary actions to be taken will be set out in the investigation report, and CAPO will record such disciplinary actions to be taken in the Checklist. Following IPCC's endorsement of the investigation reports, CAPO will update the Checklist after the case-specific disciplinary actions are completed. For cases involving formal disciplinary proceedings against officers concerned, CAPO will make an entry in the Checklist when it forwards the disciplinary case to the relevant police formations for follow-up actions, and will update the entry after the disciplinary actions have been completed. Under these arrangements, IPCC may give its opinion on the disciplinary actions taken or to be taken, as the case may be, in respect of any member of the police force when it examines the investigation reports on the reportable complaints concerned or the Checklist.

98. The Administration has also explained that for complaint cases likely to result in formal disciplinary proceedings against the officers concerned, CAPO may consider proceeding with formal disciplinary actions and submitting the investigation reports on the complaints concerned to IPCC in parallel. This is because as a matter of natural justice, disciplinary proceedings should be conducted without undue delay, so as to ensure that the officers concerned receive a fair hearing and that they will not be burdened with the threat of disciplinary proceedings unnecessarily. IPCC is fully aware of this arrangement and has agreed that the Police may undertake formal disciplinary actions before the investigation reports are endorsed by IPCC. The Administration has pointed out that once sufficient evidence of a disciplinary offence is identified, disciplinary proceedings should be initiated as soon as reasonably practicable. If disciplinary action is delayed unnecessarily, it is possible that the member of the police force being disciplined may claim that it is a breach of natural justice, thereby challenging the validity of the disciplinary action taken.

99. While accepting that it is CP's prerogative to take disciplinary actions against police officers, some members are of the view that if IPCC considers the action to be taken is not proportionate to the seriousness of substantiated complaints, CP should have regard to IPCC's opinion.

100. Hon James TO has proposed CSAs to provide for IPCC to advise CP of its recommendation, instead of opinion, on the action taken or to be taken in respect of a member of the police force.

Interviews conducted by Council (clause 19)

Clause 19(1) and (2)

101. Clause 19(1) of the Bill provides that at any time after an investigation report on a reportable complaint has been submitted to IPCC, IPCC may, for the purpose of considering the report, interview any person who is or may be able to provide information or other assistance to IPCC in relation to the report. Under clause 19(2), at any time after an interim report on a reportable complaint has been submitted to IPCC, IPCC may, with the consent of CP, interview such persons.

102. Some members consider that IPCC should be given a general power to interview any person at any time for the purpose of performing its functions under the Bill. They have suggested allowing IPCC to conduct interviews upon receipt of an interim investigation report, unless it appears to CP that there are reasonable grounds that the conduct of such interviews would be likely to prejudice the investigation of any crime or any complaint made to him; allowing IPCC to interview any person at any time after CAPO has interviewed such a person; or allowing IPCC to interview any person at any time unless there are reasonable grounds that the conduct of such interviews would be likely to prejudice the investigation of any crime or of any complaint made to CP.

103. Some other members are of view that it is more appropriate for IPCC to interview any person after an investigation report has been submitted to IPCC. Given that the Police has a duty to investigate complaints against the Police and IPCC has a monitoring role, providing IPCC with a power to interview any person prior to receiving an investigation report, in parallel with Police's interviewing witnesses, will give rise to confusion in the process of investigation of complaints.

104. The Administration has advised that the full range of information provided by the Police under clause 16 would enable IPCC to have a comprehensive overview of whether the Police has handled and investigated a complaint fairly and impartially. If IPCC considers that an interview with the relevant person(s) is needed to assist it to consider the report, clause 19(1) will serve the purpose. In addition, clause 19(2) provides that IPCC may conduct such an interview for the purpose of considering an interim investigation report submitted by the Police under clause 17. Furthermore, clauses 23 and 34 respectively empower IPCC members and IPCC's observers to attend an interview conducted by the Police or observe the collection of evidence undertaken by the Police in respect of a reportable complaint at any time and without prior appointment, so as to assist IPCC to observe the manner in which the Police handles or investigates reportable complaints.

105. In the view of the Administration, the above arrangements can effectively enable IPCC to carry out its monitoring role. Providing IPCC with a general power to conduct interview at any time would amount to giving IPCC an investigative power. This is not

consistent with the policy of maintaining the effective two-tier police complaints systems.

106. Hon James TO has proposed CSAs in connection with IPCC's power of conducting interviews.

107. According to the IPCC Secretariat, since the introduction of the IPCC Interviewing Scheme in 1994, IPCC had interviewed 48 witnesses involved in 43 complaints under the Scheme. No interview was conducted under the Scheme in 2007. The witnesses interviewed are mainly expert witnesses.

108. Hon James TO considers that written reports from witnesses, e.g. expert witnesses, could be categorized as/are of the same nature as a record of interview of IPCC, and suggests that a provision should be added to provide for IPCC to receive such reports.

109. The Administration has explained that under clause 19(1), IPCC may interview any person who is or may be able to provide information or other assistance to IPCC. Information to be provided includes oral or written information. Thus, IPCC may receive written reports.

110. Hon James TO has proposed CSAs to expressly provide for IPCC to receive other materials.

Clause 19(3)

111. Having regard to members' views on clause 19(3), the Administration will amend the clause to spell out in express terms that CP must act reasonably in forming his opinion that an interview would be likely to prejudice the investigation of any crime or any complaint made to him.

Clause 19(4), (5) and (6)

112. Clause 19(4) provides that an interview under this section must be conducted in private. Members have enquired about the meaning of "in private" in the clause, and whether an interviewee can disclose the contents of an interview afterwards, keep a voice recording of the interview or communicate with his lawyer during the interview. In connection with interviews conducted by IPCC, some members have suggested allowing a person interviewed by IPCC to be accompanied by a lawyer or a person who could offer assistance to the interviewee at the interview; providing for the interviewee to be accompanied by a lawyer at an interview subject to IPCC's consent; and providing for any person to make a request for an interview with IPCC for the purpose of giving information relating to an investigation report or facilitating IPCC in the performance of its duties in identifying any fault or deficiency in any practice or procedure adopted by the Police, and if IPCC refuses such a request, it must give reasons.

113. The Administration has explained that the dictionary meaning of "in private" is "not in public". Under the existing practice, the purpose of interviewing witnesses is solely to clarify matters with the witnesses and IPCC will not take over the investigation role of the Police. Witnesses' attendance of IPCC's interviews is entirely voluntary and the interviews are conducted in private. Interviewees may be accompanied by their lawyers. Interviewees are free to communicate with their lawyers during the interviews, but lawyers do not have a right of audience before IPCC. This practice is reflected in clause 19(6). However, persons other than the witnesses' lawyers and/or parents or guardians of minor interviewees will be excluded from the interviews. The Administration will introduce CSAs to make it clear that interviewees may be accompanied by their lawyers. The Administration has also informed members that generally speaking, IPCC has no objection if an interviewee wishes to make a voice recording of the interview for his retention provided that he agrees to allow IPCC to make a recording in parallel for its record. Interviewees are required to undertake not to make any unauthorized disclosure of the details of the interviews.

114. The Administration has further explained that for the purpose of considering investigation reports or interim investigation reports submitted by CAPO, IPCC may interview any person who is or may be able to provide information or other assistance to IPCC in relation to the reports. Interviewees' attendance of the interviews is entirely voluntary. The Administration considers that IPCC should have the full discretion to decide who should be interviewed and who may be present at the interviews. Such discretion is important for IPCC to consider whether to interview a person requesting such interview and whether any person should be allowed to accompany an interviewee, having regard to the circumstances of individual reportable complaints. The existing clause 19(1), (2) and (5) reflect such discretion and should be retained.

115. Hon James TO has proposed CSAs to the effect that an IPCC's interviewee may be accompanied by any person he thinks necessary.

Clause 19(8) and (9)

116. Taking account of members' views, the Administration will amend clause 19(8) and (9) to the effect that IPCC must keep a record of every interview and such record is to be kept such period as may be necessary for the performance of IPCC's statutory functions, and that IPCC may use the record of interview for a purpose permitted under clause 37(2).

Full access to information (clauses 8 and 20)

Information relating to reportable complaints - legal professional privilege

117. Under clause 20(1)(a) of the Bill, IPCC may require CP to provide to IPCC any information or material relating to a reportable complaint. The existing IPCC has expressed concern about the intention of the Administration to withhold relevant legal advice which has been obtained by the Police and which may be part and parcel of a complaint investigation on grounds of legal professional privilege (LPP), and that CP has discretion to waive his right to LPP on a case-by-case basis. The existing IPCC does not accept that LPP should be invoked to allow CP to withhold relevant information from IPCC.

118. The existing IPCC has pointed out that as an oversight body whose role is to monitor the investigation of CAPO, IPCC should be given full and unrestricted access to information pertaining to complaints investigations to enable it to be satisfied that CAPO has undertaken full and impartial investigations and considerations of complaint allegations. It would be undesirable for the integrity of the complaints system for CP to have discretion to waive his right to LPP and let IPCC see the information as he deems fit. To do so would be perceived as conferring on CP the advantage of being selective in disclosing to IPCC legal advice to the advantage of the Police and would discredit the police complaints system. The existing IPCC has suggested that an explicit provision should be added to the Bill to provide for IPCC to have such complete access to information.

119. The Administration has responded that the Bill enables IPCC to have wide access to such information. The Administration considers that the well-established principle of LPP under the common law should be preserved. The Bill permits CP to consider waiving his right to LPP on a case-by-case basis in ensuring that IPCC is provided with sufficient information pertaining to the reportable complaints concerned for performing its function of monitoring and reviewing the handling of police complaints. CP will not deliberately withhold information from IPCC to the advantage of the Police.

120. The existing IPCC feels strongly that CP should not have the discretion to invoke his LPP and let (or not let) IPCC see the information as he deems fit. IPCC would be seriously constrained in discharging its function of monitoring the Police's investigation without knowing whether and what information the Police has obtained arising out of or in the course of complaint investigation that may shed light on the determining of classification of an allegation. To enable IPCC to properly discharge its functions, the existing IPCC maintains that an express provision allowing IPCC full and unrestricted access to information pertaining to complaints investigation, including legal advice, is definitely necessary, given that legal advice is relevant information as indicated by past experience. It proposes to add a provision in clause 20 to read as "Notwithstanding any claim of legal professional privilege, the Commissioner shall

provide the Council for the purposes of performing the Council's functions under sections 7(1)(a) to (c) of this Ordinance with all documents between the Commissioner and his professional adviser in so far as the same are relevant to the handling or investigation of any reportable complaint."

121. The Administration has responded that the proposed provision amounts to a general abrogation of CP's right to LPP. The protection of information subject to LPP under the common law, i.e. an individual's right to consult his lawyer in confidence, should be preserved. LPP is the cornerstone of Hong Kong's legal system, and is enshrined and safeguarded in the Basic Law. The Bill does not abrogate LPP, and permits CP to consider waiving his right on a case-by-case basis. IPCC will be provided with sufficient relevant information pertaining to the reportable complaint concerned for performing its function of monitoring the handling of police complaints. In the light of these, the Administration does not consider the provision proposed by the existing IPCC acceptable.

122. Some members support the Administration's position. Other members concur with the views of the existing IPCC and support its proposed provision. They are concerned that if CP makes use of LPP for the purpose of not disclosing information to IPCC, IPCC's monitoring of investigation of complaints against the Police will be undermined and public confidence on IPCC will be adversely affected. Hon James TO has proposed CSAs in this regard.

Other information relating to reportable complaints

123. Hon James TO has expressed concern as to whether IPCC is empowered under clause 20(1)(a) to require CP to provide information and material not raised in a reportable complaint but discovered and found substantiated during the investigation of the complaint. He suggests that clause 20(1)(a) should be amended to cover information or material relating to an investigation report.

124. The Administration has explained that clause 20(1)(a) empowers IPCC to require CP to provide any information or material relating to a reportable complaint. Clause 16 obliges CP to submit an investigation report to IPCC as soon as practicable after completing the investigation of a reportable complaint. With these two clauses, IPCC may require the Police to address questions, provide additional information or material in respect of an investigation report on a reportable complaint. The Administration therefore does not consider it necessary to amend clause 20(1)(a) as suggested by Hon James TO. At the request of Hon James TO, S for S will state in his speech to be made during the resumption of Second Reading debate on the Bill that clause 20(1)(a) covers information and material in respect of an allegation arising from a reportable complaint that is classified as "Substantiated other than reported" in an investigation report.

125. Under clause 20(1)(b), IPCC may require CP to clarify any fact or discrepancy relating to a reportable complaint. Having regard to members' views, the Administration has agreed to amend the clause to include findings relating to a reportable complaint. The Administration will also add a provision under clause 2 (interpretation clause) to define "material" as including any document or record in any form and any article or substance.

126. Hon James TO has proposed a CSA to amend clause 20(1)(a) to cover any information or material relating to an investigation report. He has also proposed a CSA to clause 20(1)(b) to specify that IPCC may require CP to provide explanation in relation to any fact, discrepancy, allegation, ambiguity, point of doubt or view relating to a reportable complaint.

Information relating to notifiable complaints

127. Clause 8(3) of the Bill requires CP to submit a list of notifiable complaints to IPCC together with a brief description of all notifiable complaints and the reasons for categorizing the complaints as such. Under clause 15(3), IPCC may require CP to provide explanations to support the categorization of a complaint as a notifiable complaint.

128. The existing IPCC considers that IPCC should be given full and unrestricted access to information or material to a notifiable complaint for the purpose of determining whether the complaint should be re-categorized as a reportable complaint, as with the current practice. It has suggested that complete access to such information should be provided for by an explicit provision in the Bill, similar to clause 20(1).

129. The Administration has responded that in accordance with the current practice, the Police will continue to provide sufficient information to enable IPCC to consider whether a notifiable complaint should be re-categorized. In this connection, clause 8(3) already requires CP to submit a list containing brief description of all notifiable complaints received by the Police and the reasons for categorizing the complaints as such. Such reasons should have already provided sufficient justification for categorizing the complaints as notifiable complaints. If IPCC considers that additional information is needed, the Police stands ready to provide such information. The Administration is of the view that the general provision under clause 7(2) which empowers IPCC to do all such things as are reasonably necessary for, or incidental or conducive to, the performance of its functions under the Bill should sufficiently enable IPCC to require the Police to provide additional information in relation to notifiable complaints. The Administration therefore considers that a specific provision similar to clause 21(1) for the purpose of IPCC's consideration of re-categorization of notifiable complaints is not necessary.

130. The existing IPCC does not agree with the Administration that the general provision under clause 7(2) should sufficiently enable IPCC to require the Police to

provide additional information about notifiable complaints as and when necessary. The existing IPCC is of the view that clause 7(2) merely empowers IPCC to do all such things that are reasonably necessary for the performance of its functions under the Bill, but does not impose an obligation upon CP for compliance. If the general provision is sufficiently clear, many of the provisions in the Bill would not be needed, including clause 20(1) which expressly requires CP to provide any information or material relating to a reportable complaint. As the Administration has stated that the Police stands ready to provide additional information about notifiable complaints, it should not be objectionable to stipulate in the Bill the requirement for the Police to provide additional information about notifiable complaints as and when required by IPCC.

131. The Administration has responded that the IPCC's monitoring of whether a complaint should be categorized by CAPO as a notifiable complaint is to ensure that all complaints which should properly be categorized as reportable complaints will be so categorized and their investigations will consequentially be monitored by IPCC. This is a function already covered by clauses 7(1)(f) and 7(2) of the Bill. In addition, clause 15(3) empowers IPCC to require CP to provide explanations to support the categorization of a complaint as a notifiable complaint. The Administration therefore considers clauses 7(1)(f), 7(2) and 15(3) should sufficiently empower IPCC to require CAPO to provide relevant information on notifiable complaints to facilitate IPCC in discharging its function of monitoring the categorization of notifiable complaints. Taking into account members' comments, the Administration will add a provision to clause 15(3) to empower the IPCC to require CP to provide information or material in support of the explanation for categorizing a complaint as notifiable complaint.

Investigation of reportable complaints (clause 21)

132. Clause 21 provides that IPCC may require CP to investigate reportable complaints. Members have enquired about the investigation of complaints by the Police and suggested that complaints not to be resolved by "informal resolution" should be investigated by a police formation other than the one to which the police officers who is the subject of complaint is attached.

133. The Administration has explained that according to the existing practice, CAPO will refer reportable complaints of a minor nature involving use of offensive/abusive language, impoliteness/rudeness/improper manner, misunderstanding of police procedure and/or the law, unnecessary delay and/or inconvenience, neglect of duty and minor forms of misconduct to the relevant police formations for investigation. However, if a complainant expressly requests that the complaint be investigated by CAPO, CAPO may conduct the investigation after considering the circumstances of the complaint.

134. On referral of a reportable complaint, the Formation Commander concerned will nominate an experienced officer, not below the rank of Inspector, with sufficient knowledge of the matters involved to conduct the investigation. To ensure the

impartiality of the investigation, officers having close connections with or operational responsibility over the complainee(s) will not be nominated. The nominated officer is required to complete the investigation within two months and submit his findings and recommendations to the Formation Commander for consideration. The Formation Commander will then submit a report, together with the case file containing all relevant information and documents, to CAPO for review and preparation of an investigation report for submission to IPCC. CAPO may raise questions and seek clarification on the report as necessary. If the Formation Commander finds that the investigation unveils a more serious matter or involves more than one police formation, suggesting that CAPO may be better positioned to conduct the investigation, he will raise the matter with CAPO which will in turn decide on the appropriate approach.

135. The Administration has stressed that the Police attaches great importance to ensuring that the investigation of police complaints is conducted impartially. In this respect, the CAPO Manual, which sets out the guidelines and procedures on the handling and investigation of reportable complaints, provides that if at any stage during the course of an investigation the investigating officer feels for whatever reason (e.g. personal acquaintance with the complainant or complainee) that complete impartiality is not possible, he is required to report this fact to his senior officer. The senior officer will direct another investigating officer, as necessary, to continue with the investigation. In addition, Police General Order stipulates that all complainees should not be forewarned of the complaints against them by another police officer and that a breach of such an order would amount to a disciplinary offence. The objective is to minimize the opportunity for a complainee/police witness involved in a complaint to interfere with other witnesses or to conceal, destroy or alter evidence.

136. With the safeguards mentioned above to ensure that reportable complaints are investigated in an impartial and fair manner, the Administration does not consider it necessary to mandate that complaints that are not to be resolved by informal resolution must be investigated by officers of a police formation other than that of the complainee.

137. Clause 21(2) provides that IPCC may require CP to investigate any matter relating to a request for review of the classification of a reportable complaint if the request is made within 30 days after the complainant was notified by CP of such classification. Members have raised concern that the timing of such notification may not be readily ascertained and therefore the 30 days should be counted from the date of the complainant's receipt of the Police's notification. They have also suggested requiring a notification under the clause to be given by registered post and setting out such a requirement in the Bill.

138. The Administration has explained that at present, the Police's notification to a complainant of the classification of the reportable complaint concerned is sent by recorded delivery unless the complainant has specified other means of receiving the notification. As there are practical ways of recording the timing of notification, the

Administration will add a provision in clause 22 to expressly provide for the determination of the time at which a notification is made.

Informing complainant of classification of reportable complaints (clause 22)

139. Under clause 22 of the Bill, IPCC may require CP to inform the complainant of the classification of the reportable complaint and the reasons for the classification. To reflect the current practice, the existing IPCC considers that the provision should be amended to oblige CP to inform the complainant of any other matters relating to the Police's operation raised by the complainant in a complaint, in addition to the classification and the reasons for the classification. The existing IPCC has pointed out that there were occasions that the Police asked IPCC to convey its reply to the complainant's query on operational matters, given that IPCC is under the duty to reply complainants on review results.

140. Some members have suggested providing for a complainant to be informed of the progress regarding the handling of his complaint, and empowering IPCC to require CP to inform a complainant on how the complaint concerned has been followed up, the outcome of investigation as well as the basis on which the relevant conclusion is drawn.

141. The Administration has explained that CAPO will consider all matters raised by the complainant in connection with his complaint. According to the existing practice and the Police's performance pledge, CAPO aims to complete the investigation of a complaint within four months and will keep the complainant informed of the progress of the investigation every two months. Upon completion of the investigation of a reportable complaint and IPCC's endorsement of the classification of the complaint in the investigation report, CAPO will issue a full reply to the complainant, setting out the complainant's allegation(s), a succinct account of the investigation conducted, the outcome of the investigation, the classification of the complaint, that the case has been reviewed by IPCC and any follow-up actions taken by IPCC. The reply provides adequate information as to CAPO's examination and consideration of the facts and evidence involved and the review conducted by IPCC. As a matter of practice, CAPO's reply will also address other enquiries or suggestions made by the complainant in addition to the complaint. As these other enquiries and suggestions do not relate to matters within the purview of IPCC, the Administration does not consider it appropriate to cover them in the Bill. In view of IPCC's comments, the Police will in future address such questions on operational matters that are unrelated to the complaint from the complainants separately so that IPCC's replies to the complainants will be confined to matters related to the latter's requests for review.

142. To reflect the existing practice, the Administration will introduce CSAs to clause 22 to the effect that CP must inform a complainant or his representative of the classification of his complaint and the reason for classification, and that the clause does not apply to cases where the complainant or his representative has indicated to CP that he does not wish to be so informed. The Administration will also add a provision to

the effect that in the case of a reportable complaint that is a request for review, IPCC must notify the complainant or the person who made the complaint (where the reportable was made by a person on behalf of the complaint) of the result of the review and the reasons for the result.

Powers to require Commissioner of Police to provide explanation on actions taken, statistics and reports (clauses 24 and 25)

143. Clause 24 of the Bill provides for IPCC to require CP to provide an explanation in relation to any action taken or to be taken in respect of a member of the police force by CP in connection with any reportable complaint. Members have enquired whether "action" in the clause includes "non-action". Some members have suggested that reference to a member of the police force be deleted from the clause.

144. The Administration has responded that clause 24 already covers the scenario where the Police has made a decision to take no disciplinary action against a member of the police force. The Administration has agreed to add a provision under clause 2 (interpretation clause) to make it clear that the term "action" in the Bill includes a decision not to take action.

145. On the suggestion to delete " in respect of a member of the police force", the Administration has explained that clause 7(1)(b) empowers IPCC to monitor disciplinary actions taken or to be taken by the Police and to provide opinions on such actions. The wording in clause 24 mirrors clause 7(1)(b) and empowers IPCC to require the Police to provide an explanation on disciplinary actions, so as to facilitate IPCC to discharge its function under clause 7(1)(b). The proposed deletion is not consistent with the policy intention of relating clause 24 to clause 7(1)(b).

146. Some members have suggested that CP should be required to submit to IPCC a report on the disciplinary action taken or to be taken instead of "explanation" under clause 24.

147. The Administration has explained that matters relating to disciplinary actions taken or to be taken in connection with reportable complaints will be shown on the Disciplinary and Criminal Checklist. Normally, further questions from IPCC will be raised at the joint IPCC/Police meetings, and oral answers will be given by the Police. A written explanation in relation to disciplinary actions taken or to be taken is rarely required. As IPCC has accepted, disciplinary actions instituted against members of the police force are within the prerogative of CP. Thus, while CP stands ready to provide an explanation in relation to any action he has taken or will take in respect of a member of the police force in connection with any reportable complaint, it would not be appropriate to stipulate in the Bill that IPCC may require CP to submit a report to it in relation to such action.

148. Some members have queried whether there is any substantial difference in the

content of an explanation and a report in respect of disciplinary action taken against a member of the police force.

149. In examining the Disciplinary and Criminal Checklist prepared by CAPO for submission to IPCC, members have pointed out that there is a lack of sufficient information about the cases referred to in the Checklist and a lack of clarity in the matters to be endorsed by IPCC. They have requested the Police and the IPCC Secretariat to jointly consider improving the presentation and contents of the Checklist and revert to the Panel on Security.

150. Clause 25(a) provides that IPCC may require CP to compile and submit to IPCC statistics of the types of conduct of members of the police force that have led to reportable complaints. Hon James To considers that the words "types of" in the clause should be deleted. He has also expressed concern that clause 25(a) does not empower IPCC to require CP to submit statistics about the conduct of members of the police force that is unrelated to specific reportable complaints but that might lead to reportable complaints.

151. The Administration has advised that at present, the Police compiles statistics of types of conduct of members of the police force that have led to reportable complaints for IPCC's reference. The statistics are compiled by reference to the different natures of such conduct, such as "assault", "misconduct/improper manner/offensive language", "neglect of duty", "unnecessary use of authority", "fabrication of evidence" and "threat". Clause 25(a) reflects the existing practice and the words "types of" should be retained in the clause.

152. The Administration has further advised that clause 7(2) provides that IPCC may do all such things that are reasonably necessary for, or incidental or conducive to, the performance of its functions under the Ordinance. This includes requiring CP to offer assistance in the provision of such information, although whether a requirement is reasonable would depend on the specific circumstances of a case. Clause 27 requires CP to comply with such a requirement, unless compliance with the requirement would be likely to prejudice the security of Hong Kong or the investigation of any crime. Clause 7(2) and clause 27 together should sufficiently empower IPCC to request CP to provide such information.

153. At the request of Hon James TO, S for S has agreed to state in his speech to be made during the resumption of Second Reading debate on the Bill that IPCC is sufficiently empowered under clause 7(2) to reasonably require CP to compile and submit statistics about the conduct of members of the police force that are unrelated to specific reportable complaints but that might lead to reportable complaints.

154. Hon James TO has proposed CSAs to clause 25(a) to the effect that IPCC may require CP to submit to IPCC any statistics of conduct of members of the police force.

Orders and manuals relating to handling or investigation of reportable complaints (clause 26)

155. Clause 26 of the Bill provides that to enable IPCC to make such recommendations as it thinks necessary to CP, IPCC may require CP to consult IPCC on any proposed new orders or manual of the police force that relate to the handling or investigation of reportable complaints, or any significant amendments proposed to existing such orders and manuals.

156. Hon James TO considers that IPCC should be consulted on all orders and manuals of the Police for the purpose of its performance of functions under the Bill. He will propose CSAs in this regard.

157. The Administration does not agree with Mr TO's proposal to expand the scope of consultation to all guidelines or procedures of the Police. The consultation with IPCC should be confined to orders and manuals concerning the handling or investigation of reportable complaints. Nevertheless, the Administration will delete the phrase "To enable the Council to make such recommendations as the Council sees fit to the Commissioner" in clause 26(1) to alleviate the concern that IPCC may not require CP to consult it on the orders and manuals concerned if it does not have any recommendations to make. Taking into account the comments of the Bills Committee, the Administration will also align the formulation of clause 26(1) with that of the revised clause 22(1) to the effect that CP must consult IPCC on any proposed new order or manual of the police force that relates to the handling of investigation of reportable complaints or any significant amendment proposed to be made to the order and manual of the police force in so far as the amendment relates to the handling or investigation of reportable complaints.

Compliance with requirements of Council (clause 27)

158. Under clause 27 of the Bill, CP must comply with any requirement made by IPCC unless he is satisfied that compliance with the requirement would be likely to prejudice the security of Hong Kong or the investigation of any crime.

159. Some members have expressed concern that with such a provision in place, CP may withhold information from IPCC on these two grounds, thus undermining IPCC's discharge of its functions to monitor and review CAPO's handling and investigation of complaints. They have suggested that clause 27 should be deleted, or alternatively, the reference to CP in the clause should be substituted by S for S or Secretary for Justice (SJ).

160. The existing IPCC has expressed concern that the term "any crime" in clause 27 is unnecessarily wide, such that CP may choose to decline to comply with IPCC's requirements merely by the reason that compliance would likely prejudice the investigation of a crime of a minor nature. It has suggested that the term "any crime"

should be replaced by "indictable offence" and/or setting a time limit for CP not to comply with IPCC's requirements.

161. The Administration has advised that under section 4 of the Police Force Ordinance (Cap. 232), CP, subject to the orders and control of CE, shall be charged with the supreme direction and administration of the police force. CP is statutorily responsible for law and order issues and has the obligation to safeguard the integrity of any crime investigation. While CP is committed to providing sufficient information to IPCC to facilitate IPCC in the discharge of its functions to monitor and review CAPO's investigation reports on reportable complaints, he has the duty to ensure that disclosure of the information or materials concerned would not prejudice any crime investigation. CP will not lightly rely on this provision to decide not to comply with IPCC's requirements. In response to IPCC's requirements, CP will take into account the facts and evidence available, and assess the risk of the security of Hong Kong or crime investigation being prejudiced if IPCC's requirements are complied with. In the very rare circumstances where CP makes a decision of non-compliance, he will provide an explanation to IPCC as to why IPCC's requirements cannot be complied with. If IPCC is not satisfied with CP's explanation, it may make a report to CE under clause 28. CE may direct CP as he sees fit.

162. The Administration has further advised that in the very rare circumstances where CP decides not to provide information or materials required by IPCC at a certain point in time having regard to clause 27, it is possible that such information or materials can be provided to IPCC when CP is subsequently satisfied that such provision will no longer affect the security of Hong Kong or investigation of crime. According to available information, CP has not so far declined IPCC's requests for information or materials on the ground that such provision would be likely to prejudice the security of Hong Kong or crime investigation.

163. On the suggestion of substituting S for S or SJ for CP in clause 27, the Administration has explained that S for S is not in any way involved in crime investigation or the scrutiny of CAPO's investigation reports on complaints against police officers. The Administration considers that there is merit in the arrangement proposed under the clause rather than involving S for S in the process. In the case of SJ, in view of his role as the legal adviser to the Government, the Administration does not consider it appropriate to involve him in the executive function of determining whether the disclosure of certain information to IPCC may prejudice the security of Hong Kong or crime investigation.

164. Regarding the existing IPCC's suggestions, the Administration is of the view that they may not be practicable. The Administration explains that in many cases, a crime which initially appears to be a non-indictable offence and triggers an investigation may turn out to be an indictable one upon detailed investigation. It may also not be practicable to set a time limit, as the time required for investigating different crimes varies.

165. The existing IPCC has pointed out that as soon as a non-indictable offence turns to be an indictable one and compliance with IPCC's requirements would prejudice the investigation of the crime, the Police could notify IPCC and refrain from complying with IPCC's requests at that turning point. Vice versa, the Police could resume complying with IPCC's requirements upon an indictable offence having become a non-indictable one. Setting a time limit for CP's non-compliance is also not impractical because the time limit can be subject to review as and when necessary. The existing IPCC considers that its suggestions of replacing "any crime" with "an indictable offence" and/or setting a time limit for CP not to comply with IPCC's requirements subject to review is reasonable and pursuable.

166. Some members have further requested the Administration to consider setting out in clearer terms the circumstances under which CP might refuse to comply with the requirements of IPCC under clause 27, or amending the clause to require CP to provide information or materials relating to a complaint to IPCC, subject to the safeguards against the disclosure of certain information by IPCC.

167. The Administration has pointed out that CP is responsible for law and order issues and has the obligation under the Police Force Ordinance to safeguard the integrity of the investigation of any crime, while ensuring that IPCC is provided with sufficient information for the purpose of discharging its function to monitor reportable complaints. The intention of clause 27 is to ensure CP's compliance with the requirements of IPCC under the Bill save in certain specified circumstances, e.g. when CP needs to protect the integrity of criminal investigation in accordance with the Police Force Ordinance. The Administration envisages that the clause would rarely be invoked by CP.

168. Having considered the views of the existing IPCC and members, the Administration will amend clause 27 to the effect that CP must comply with any requirement made by IPCC under the Bill unless S for S certifies that compliance with the requirement would be likely to prejudice the security of Hong Kong or the investigation of any crime, and that a certificate signed by S for S certifying such matters is conclusive evidence as to the matters so certified.

169. The existing IPCC has suggested that the certificate from S for S should stipulate a validity period after which S for S should review the matter. The Administration does not consider such a stipulation necessary, as in practice, where CP's compliance with IPCC's requirement is critical to the IPCC's consideration of the case in question, the matter would naturally be under regular review so that the IPCC's examination of the case could be completed at the earliest opportunity.

170. Hon James TO has proposed CSAs to provide that CE (or S for S) may issue a certificate allowing CP not to comply with the requirement of IPCC after having regard to "public interest involved with the complaint" and whether "compliance with the

requirement may seriously prejudice the security of Hong Kong and the investigation of indictable offences".

Report to the Chief Executive (clause 28)

171. Clause 28 of the Bill provides that IPCC may make reports to CE as it thinks necessary. The existing IPCC considers that instead of relying on the normal practice that CE would respond to the statutory body submitting a report to him, a provision requiring CE to make a response to the IPCC's report to him should be added. Such a provision would be in the interest of IPCC's discharging of its functions under the Bill.

172. The Administration has explained that CE, upon receiving any report from IPCC, will consider the report in detail and examine whether any recommendations made in the report should be accepted and whether any other follow-up action is required. It is an established practice that CE or his authorized officer will respond to the statutory body submitting the report. The Administration, therefore, considers that it is not necessary to add an express provision in the Bill. Indeed, a number of existing Ordinances establishing statutory bodies, e.g. the Release under Supervision Board established under the Prisoners (Release Under Supervision) Regulations (Cap. 325A), the Vocational Training Council established under the Vocational Training Council Ordinance (Cap. 1130) and The Ombudsman established under The Ombudsman Ordinance (Cap. 397), provide that the statutory bodies may make reports to CE, but do not contain express provisions that CE must respond to the reports.

173. In response to Hon James TO's suggestion to provide for a statutory mechanism for the automatic referral of any disagreement between IPCC and CP to CE for a determination, the Administration has advised that IPCC and the Police have been working in the spirit of mutual understanding and cooperation in operating the police complaints system, and the Police takes IPCC's comments and recommendations seriously. In addition, clause 28 already provides a general power for IPCC to make such reports to CE as it thinks necessary. The Administration therefore considers it unnecessary to provide for the statutory mechanism as suggested by Hon James TO.

174. Hon James TO has proposed CSAs to provide that CE must respond to the reports made by IPCC.

Duty to keep confidence (clause 37)

175. Clause 37 imposes on a specified person (including IPCC, a member of IPCC, etc.) as defined in clause 36 a duty not to disclose any protected information. The existing IPCC has pointed out that in case of any disagreement between IPCC and CP over the handling and classification of a reportable complaint, IPCC could only advance its case by making a report to CE under clause 28, or to make public the unresolved issue for public scrutiny. An express provision is thus of paramount importance to ensure that IPCC may disclose CP's explanations for not accepting the

IPCC's advice regarding the findings and classifications of CAPO's investigations, and the reason for any IPCC's disagreement with the Police on the disciplinary action to be taken. The general provision under clause 37 that IPCC is not prevented from disclosing protected information if it is necessary for the performance of its functions under the Bill may not be sufficiently specific for the purpose. Some members agree with the existing IPCC on the need for such an express provision.

176. The Administration has responded that clause 37(2)(a) as currently drafted already permits IPCC to disclose protected information as long as the disclosure is necessary for the performance of the IPCC's functions under the Bill. Protected information covers matters concerning the manner in which any reportable complaint is handled or investigated by the Police, actions taken/to be taken/not taken by the Police in respect of any reportable complaint, statistics provided by the Police and the Police's explanations for not accepting the IPCC's advice regarding the findings and classifications of CAPO's investigations. The Bill does not prohibit IPCC from making public the Police's explanations and the reasons for any disagreement of IPCC with the Police on the disciplinary action to be taken, if the disclosure is necessary for discharging its monitoring function.

177. The existing IPCC maintains its concern that the onus of proof would be on the part of IPCC when it is challenged on making unauthorized disclosure. The existing IPCC has pointed out that IPCC may not be able to rely on clause 37(2)(a) to make public the Police's explanations for not accepting the IPCC's advice and the reasons for any disagreement with the Police on the disciplinary action to be taken, as such disclosure may not fall within any of the IPCC's functions under clause 7(1) of the Bill. Given that IPCC has no power to determine the results of the investigation, disclosure is a means for IPCC to invite the public's comments and scrutiny on matters which it cannot agree with CAPO and such a means is of paramount importance to IPCC. IPCC's power to appeal to the public on unresolved matters with CP should not be subject to unnecessary restrictions or hurdles, or civil or criminal liability, and an express provision in the Bill to allow IPCC to make such disclosure is necessary. The existing IPCC has proposed that the following provision be added to clause 37 -

"For the avoidance of doubt, where there is disagreement between the Council and the Commissioner regarding -

- (a) the findings and classifications of any reportable complaint; or
- (b) the actions taken or to be taken by the Commissioner against any member of the police force,

the Council may disclose all facts relating to such disagreement to such persons as it considers appropriate, and such disclosure shall be regarded as being necessary for the performance of the Council's functions under this Ordinance."

178. Having considered the views of the existing IPCC and members, the Administration has agreed to add an avoidance of doubt provision to the effect that in making disclosure under clause 37(2)(a), IPCC may disclose to the public the facts of any disagreement between IPCC and the Police on the findings or classification of a reportable complaint, or its opinion on the disciplinary actions taken or to be taken by the Police in connection with a reportable complaint.

179. Some members have suggested allowing IPCC to disclose information on the grounds of public interest or revealing abuse of power, serious neglect of duty or other serious misconduct as provided under section 30 of the Prevention of Bribery Ordinance (Cap. 201) (POBO).

180. The Administration has pointed out that the IPCC's function is to monitor the Police's handling and investigation of reportable complaints, so as to ensure that such investigation is conducted fairly and impartially. Clause 37(2)(a) of the Bill already adequately enables IPCC to disclose matters relating to any reportable complaints if the disclosure is necessary for the performance of its monitoring function. This clause covers disclosure of any unlawful activity, abuse of power, serious neglect of duty or other serious misconduct of any members of the police force involved in reportable complaints. Meanwhile, the Police is responsible for safeguarding public order, public security and public safety. In the event that IPCC considers that any reportable complaint unveils a serious threat to public order, the security of Hong Kong or public safety, it may relay such an observation to the Police for follow-up actions.

181. Hon James TO has proposed CSAs to add "for the disclosure of any unlawful activity, abuse of power, serious neglect of duty or other serious misconduct by a member of the police force; for the disclosure of a serious threat to public order or to the security of Hong Kong or to the health or safety of the public; for public interest" to the circumstances under which IPCC may disclose protected information.

182. Regarding clause 37(2)(c), Hon James TO has proposed CSAs to enable IPCC to disclose protected information upon LegCo exercising its statutory rights under the Legislative Council (Power and Privileges) Ordinance (Cap. 382).

183. Clause 37(4) lists the persons to whom IPCC may disclose the identity of parties involved in a complaint for the performance of its functions under the Bill. The existing IPCC has suggested that the clause should be amended to also cover potential witnesses who may decline to attend an interview with IPCC in the end, CE, other relevant government departments or statutory/advisory bodies (where referral of a case is necessary if the matter is subject to other jurisdictions), and legal representatives, friends or relatives who accompany a witness to be interviewed by IPCC provided that their presence is approved under clause 19.

184. The Administration has responded that the identity of a complainant, complainees or person who assists the Police in the handling or investigation of a complaint

constitutes sensitive personal data subject to protection. A balance has to be struck in determining the circumstances under which and the persons to whom such information needs to be disclosed to facilitate the IPCC's discharge of its function of monitoring and reviewing the handling and investigation of public complaints against the Police. Clause 37(4)(e) already permits disclosure of such personal data to a person interviewed by IPCC pursuant to clause 19. In view of IPCC's comments, the Administration will amend clause 37(4) to include a person whom IPCC invites to an interview pursuant to clause 19 and any person who is present at an interview in accordance with clause 19 as well as CE.

185. The Administration has further advised that clause 37(2)(b) as read with clause 37(3) provide that IPCC may disclose protected information, including the information under clause 37(3), for the purpose of reporting evidence of any crime to such authorities as IPCC considers appropriate. Clause 7(1)(a) empowers IPCC to make recommendations on the Police's handling or investigation of reportable complaints. If IPCC considers that a case should be referred to other relevant government departments or statutory/advisory bodies for necessary actions, it may make such recommendations to CAPO. CAPO will take follow-up actions as appropriate. Under clause 25(b), IPCC may require CAPO to submit to IPCC a report on the actions taken/to be taken in respect of such recommendations. With these provisions, the Administration does not consider it necessary to expand clause 37(4) to cover relevant government departments or statutory/advisory bodies.

186. Some members have suggested permitting disclosure of information under clause 37(4) to a person who assists or has assisted the complainant in the handling or investigation of a complaint.

187. The Administration will introduce CSAs to widen the scope of clause 37(4) to permit the disclosure of the identity of a complainant, a complaine, or a person who assists or has assisted the Police in the handling or investigation of a complaint (as covered by clause 37(3)) to a person who is the authorized representative of the complainant under clause 14, or a person who has written authorization from the complainant to handle the complaint in the complainant's stead.

Protection of Council and its members, etc. (clause 38)

188. In response to members' concern over the protection accorded to members of IPCC, the Administration has stated that it is committed to providing IPCC members with the necessary immunity to enable them to discharge their functions effectively, without fear or favour, and to ensure that complaints against the Police are handled and investigated fairly and impartially. Clause 38 of the Bill serves this purpose and is proportionate to the nature of the functions of IPCC.

189. The Administration has explained that under clause 38(1), any act done or omitted to be done, by an IPCC member in good faith in the performance or purported

performance of a function under the Bill will not render him liable to any civil proceedings. Similar protection provision can be found in, for example, The Ombudsman Ordinance, the Electoral Affairs Commission Ordinance, the Consumer Council Ordinance and the Equal Opportunities Commission Ordinance. Clause 38(2) provides that for the purposes of the law of defamation, if an IPCC member makes any comment or publishes any matter in relation to a complaint in any communication, report or statement, in writing or otherwise, and for the performance of his functions under the Bill, that comment or publication is absolutely privileged. Similar protection provision can be found in The Ombudsman Ordinance and the Electoral Affairs Commission Ordinance.

190. Regarding persons engaged by IPCC for their technical or professional services, the Administration has pointed out that as provided under clause 38(3), the protection given by clause 38(1) or (2) does not apply to them. As these persons are engaged to provide technical or professional services to IPCC, they are not expected to make any comments or publications for the performance of any functions under the Bill. The Administration, therefore, does not consider it necessary to protect them from civil liability. In practice, the Administration envisages that such persons will normally be engaged under commercial contracts and should have taken out insurance policies to cover their liabilities under the contracts.

191. Members have sought clarifications on whether the Administration would be liable to any act done, omitted to be done, by a specified person in good faith in the performance or purported performance of a function under the Bill, and whether clause 38(1) would apply if the specified person has acted negligently or if there is serious default.

192. The Administration has explained that the provision in clause 38(1) is not intended to cover negligent acts or serious default. In *Greddis v. proprietors of Bann Reservoir (1873)*, there is a corollary of the assumption that no statute can be expected to authorize any acts to be carried out negligently. There are existing legislative provisions stating expressly that the statutory protection covers acts done in good faith and without negligence. The question of the liability of the Administration referred to by members are outside clause 38(1), and the issue needs to be considered having regard to the circumstances of individual cases.

193. Hon James TO has proposed CSAs to provide better protection to IPCC members in civil proceedings.

Continuance of things done by former Council (clause 40)

194. Some members have suggested that a provision be added to the Bill to expressly specify that clause 38 will not affect the respective rights of IPCC and other parties that exist before the incorporation of IPCC in relation to litigation between IPCC and other parties.

195. The Administration has explained that by virtue of clause 40(1), the validity of any litigation instituted against the existing IPCC will not be affected by its establishment as a statutory body. It follows from clause 40(2) that any litigation instituted against the existing IPCC, if it has not yet been concluded, can be continued as being made against the statutory IPCC. Having regard to members' comments, the Administration will add a provision under clause 40 to expressly deal with any legal claims made by or against the existing IPCC that exist immediately before the commencement of the Bill to the effect that their proceedings will not be affected.

196. Hon James TO has queried the reason for including "to the extent that it is consistent with this Ordinance" in clause 40(3), but not clause 40(2). He has suggested that the phrase "is required to be done" should be deleted from clause 40(3).

197. The Administration has explained that clause 40(2) covers anything done before the commencement of the Bill by, in relation to or on behalf of the existing IPCC. As the matters involved have already been completed before the establishment of the statutory IPCC, it is not practical to statutorily provide that only if those matters are consistent with the IPCC will their validity be unaffected by the enactment of the Bill. Clause 40(3), on the other hand, covers things that immediately before the commencement of the Bill, are required to be done or are in the process of being done by, in relation to or on behalf of the existing IPCC pursuant to or in connection with its functions. Since the matters involved have not yet commenced or have not yet been completed, if they are to be continued by, in relation to or on behalf of the statutory IPCC, it is necessary to ensure that they are consistent with the requirements under the Bill. On such considerations, the provision of "to the extent that it is consistent with this Ordinance" in clause 40(3) should be retained. The Administration will delete "is required to be done" in clause 40(3).

198. Referring to the incident of leakage of personal data kept by the existing IPCC on the Internet as reported in 2006, some members have expressed concern as to how the statutory IPCC could meet justified compensation claims arising from litigations. They have queried whether the Administration will undertake to meet the claims if IPCC is unable to do so.

199. The Administration has responded that section 18 of Schedule 1 to the Bill provides for the resources of IPCC. In the event that IPCC is unable to meet the claims with its resources, IPCC could raise the matter with the Administration. The Administration will consider the matter having regard to the circumstances of the case.

The Observers Scheme (clauses 31 - 35 and Schedule 2)

Appointment of observers

200. Under clause 31(1), S for S may appoint such person he thinks fit to be an observer. Some members have suggested amending the clause to the effect that observers are to be appointed by IPCC on the recommendation of S for S, or that observers are to be appointed by CE.

201. The Administration has responded that the function of an observer is to assist IPCC to observe the manner in which the Police handle or investigate reportable complaints. In this respect, the Administration has the responsibility and is well positioned, in view of its extensive knowledge of individuals from a wide cross-section of the community who are potentially suitable candidates, to ensure that the right persons are appointed as observers. It is not uncommon for appointments of different nature to the same statutory/advisory body to be made by different authorities. In the case of IPCC, having regard to the respective functions of IPCC members and observers, the Administration considers that the appointment arrangement stipulated in the Bill (i.e. IPCC members to be appointed by CE and observers to be appointed by S for S, which reflects the existing practice) is appropriate.

202. Members have also enquired whether IPCC will be consulted or notified prior to the appointment of observers.

203. The Administration has responded that under the existing practice and as agreed with IPCC, candidates from a number of categories are considered for appointment as observers, including retired IPCC members, District Council Chairmen and Vice-chairmen and District Fight Crime Committee Chairmen. IPCC may also nominate individuals outside these categories for the Administration's consideration during the appointment process. Given the established practice, the Administration does not consider that there is a need to consult IPCC on individual candidates before appointment.

204. Hon James TO has proposed CSAs regarding the authority to appoint observers.

205. Members have queried whether it is the Administration's policy that the immediate family members of members of the police force will be excluded from appointment as an observer. Some members have suggested specifying in clause 31(2) that the immediate family members of members of the police force are not eligible to be an observer.

206. The Administration has stressed that it attaches importance to putting in place measures to ensure the impartiality of IPCC. Thus, in considering appointments of IPCC observers, S for S shall have regard to potential candidates' background to ensure that any persons who may have a real or perceived conflict interest in carrying the function of an observer will not be appointed as observers. It would be impracticable to implement members' suggestion without defining the scope of "immediate family member". In addition, an observer has a duty to declare interest when the situation arises. The Administration therefore does not consider the suggestion necessary.

Members requested that S for S should explain during the resumption of the Second Reading debate on the Bill that the Administration will not appoint immediate family members of members of the police force as IPCC observers.

207. Hon James TO has proposed CSAs to the effect that an immediate family member of a member of the police force is not eligible for appointment as an observer.

208. Under clause 31(2), a person who is a civil servant of the Government is not eligible to be appointed as an observer. Having regard to members' comments, the Administration will introduce a CSA to replace "civil servant" by "a person who holds an office of emolument, whether permanent or temporary, in a Government bureau or department". The proposed amendment covers all employees of the Government, including political appointees and employees on non-civil service contract terms. For the purpose of consistency, the term "civil servant" in clause 4(2) of the Bill will be amended accordingly. These government employees will be ineligible for appointment as IPCC members or observers.

Attending interviews and observing the collection of evidence

209. Under clause 34(1) of the Bill, an observer may at any time and without prior appointment attend an interview conducted by the Police and observe the collection of evidence by the Police in its investigation of a reportable complaint.

210. Members have sought information about the operation of the Observers Scheme, including how observers are notified of the Police' interviews and collection of evidence, statistics on the number of surprise visits conducted by observers, and whether observers may conduct observation before a complaint is formally made or before a complaint is categorized.

211. According to the IPCC Secretariat, observers may specify their preference, for example, to conduct observations on a round-the-year basis or observations held in a particular district. If they do not indicate any preference, they will be on duty in accordance with a roster. Observers are issued with identity cards, and the Police is provided with a list of the serving observers for verification. Complaint investigators of the Police use a standard form to notify the IPCC Secretariat by fax of all scheduled interviews with complainants, complainees and witnesses as well as occasions of collection of evidence once the dates, time and venues are known and if they are to be held at least 48 hours later. On receipt of the notification, the IPCC Secretariat will inform duty observers and relevant observers (who have specified their preference for conducting observations as aforementioned) of the appointments by fax. The IPCC Secretariat will draw observers' attention to observation occasions involving complaints of a serious nature (e.g. those involving allegations of assault and/or fabrication of evidence) or complaints being monitored by the IPCC Serious Complaints Committee.

212. If two (or more) observers indicate interest in conducting scheduled observation

on the same interview/occasion of collection of evidence, the IPCC Secretariat will invite the observer who indicates his interest later than the other observer to consider attending another observation session. Such coordination effort does not apply to surprise observation as observers are not required to give prior notice to the IPCC Secretariat of their intention to conduct such observations.

213. For scheduled observations, the IPCC Secretariat will notify the responsible complaint investigators (or conciliating officers for informal resolution cases) of the observers' attendance by fax as soon as practicable. In the event of any change to the scheduled sessions (e.g. the date/time/venue is changed), the relevant police formation will notify the observer concerned and/or the IPCC Secretariat of the change by telephone and by fax as soon as possible.

214. After making a scheduled or surprise observation, an observer is required to complete a report and return it to the IPCC Secretariat. The IPCC Secretariat will examine the report and then forward it to CAPO for necessary follow-up action. The observer will be apprised of the comments of, or follow-up actions taken by, the Police in response to his report.

215. The Administration has advised that the function of observers is to assist the IPCC to observe whether the Police handle or investigate reportable complaints in a fair and impartial manner. Before a member of the public formally lodges a complaint or before a complaint is categorized, a case is dealt with by the Police in accordance with established procedures. The Police has drawn up guidelines and procedures for dealing with public complaints. Any breach of such guidelines and procedures may result in disciplinary actions against the police officers concerned. With the foregoing, the Administration does not consider it necessary for observers to conduct observations before a complaint is formally lodged or before a complaint is categorized.

216. Members have raised concern about the small number of observations conducted by observers compared with the number of interviews and collection of evidence notified by the Police (317 observations out of 2 085 notifications in 2006, and 263 observations out of 2 147 notifications issued in 2007). They are also concerned that there had not been any surprise observations conducted by observers in 2006 and 2007. As S for S is the authority for appointment of observers, members consider that he should inform observers at the time of appointment that observers are expected to conduct surprise visits. They have suggested that IPCC should take steps to encourage observers to conduct surprise and scheduled visits. They have also suggested that sufficient information should be provided to observers to facilitate their effective observation of the Police's interviews and collection of evidence. In addition, improvements should be made to the forms for completion by observers after an observation has been conducted.

217. The IPCC Secretariat has informed members that it is reviewing the forms and procedures in connection with observers' visit (including whether and how such

procedures are to be published) and will submit recommended improvements to IPCC for endorsement in due course. A questionnaire survey to identify the reasons of observers not conducting surprise visits is being planned. Thereafter, the IPCC Secretariat will map out appropriate measures to facilitate surprise visits to be conducted by observers for consideration by IPCC. At the request of the Bills Committee, the IPCC Secretariat has agreed to revert to the Panel on Security the guidelines for observers, the improved forms for completion by an observer and detailed statistics of visits by observers one year after the enactment of the Bill.

218. Regarding clause 34(2), some members consider that observers should not be obliged to provide an opinion on whether an interview or collection of evidence has been conducted in a fair and impartial manner.

219. The Administration has responded that as set out in clause 32, the function of observers is to assist IPCC to observe whether the Police handle or investigate reportable complaints in a fair and impartial manner. Clause 34(2)(a) reinforces this function by requiring an observer to state his opinion on whether an interview or collection of evidence has been conducted in a fair and impartial manner. If an observer has any doubts about the fairness or impartiality of the interview or collection of evidence that he observed, he is at liberty to state such an opinion in his report.

220. Having regard to members' suggestion, the Administration will add provisions to the effect that the Police must notify IPCC of all interviews and collection of evidence before they are conducted. In the event that prior notification is not practically possible, the Police must notify IPCC afterwards.

221. As regards members' suggestion to spell out clearly that the drawing up of a duty roster of the observers will not affect an observer's right to conduct observation when it is not his turn according to the duty roster, the Administration has agreed to add an express provision under clause 35 to this effect.

222. In response to members' suggestion, the Administration will add a provision to clause 34 to provide that if an observer has an interest in a reportable complaint in respect of which an interview or collection of evidence is conducted by CP, the observer must not attend the interview or observe the collection of evidence.

223. Hon James TO has proposed CSAs to impose a more detailed requirement in connection with the disclosure of interest of an observer having a direct or indirect interest in a reportable complaint. Having considered Hon James TO's proposed amendments, the Administration will incorporate his amendments by expressly referring to direct and indirect interest under clause 34.

Removal of observers

224. Section 3 of Schedule 2 provides for the removal of observers. Some members have suggested that the removal of an observer should be endorsed by CE.

225. As S for S is the authority for appointing observers under clause 31, the Administration considers it appropriate to empower S for S to remove observers. The Administration does not see a need for such removal to be endorsed by CE.

226. Hon James TO has indicated that he will propose CSAs to empower IPCC or alternatively CE to remove observers.

Council's proceedings and other matters (Schedule 1)

Declaration of interest

227. Members consider that provisions should be added to Schedule 1 of the Bill to provide for how a member of IPCC or a member of a committee of IPCC having an interest in a matter being discussed or to be discussed should be handled. They consider that an IPCC member having an interest in a complaint case should be required to withdraw from the discussion of the case.

228. Having considered members' views, the Administration will introduce CSAs in respect of IPCC's determination of matters and determination of matters by IPCC committees where a member of IPCC or a member of its committee has an interest in the matters. Specifically, the CSAs will deal with the disclosure of interest in reportable complaints, in matters other than reportable complaints and in cases of written resolutions. CSAs will also be made to provide for the disclosure of interest to be recorded.

229. Hon James TO has proposed CSAs to impose a more detailed requirement in connection with the disclosure of interest where a member of IPCC or a member of its committee has a direct or indirect interest in the matters discussed. Having considered Hon James TO's proposed amendments, the Administration will incorporate his amendments by expressly referring to direct and indirect interest under the new provisions in paragraph 228 above.

Determination of procedures

230. Having regard to members' suggestion, the Administration will introduce CSAs to specify in sections 7 of Schedule 1 that IPCC may provide that an IPCC Vice-chairman may appoint, in the absence of the IPCC Chairman, the time and place for IPCC to meet.

Establishment of committees

231. The Administration has advised that it is the intention for the IPCC committees, panels or sub-groups to consist of IPCC members only. The Administration will amend section 13 of Schedule 1 to spell this out more clearly.

Mode of operation

232. On the present mode of operation of IPCC, the Administration has explained that IPCC members are divided into three sub-groups to share out the workload of examining the investigation reports on reportable complaints. Each sub-group comprises a Vice-chairman and four to five members. The IPCC Secretariat circulates the investigation reports it has scrutinized to the Vice-chairman and members of the relevant sub-group for examination. After examination by the sub-groups, the IPCC Secretariat submits all the investigation reports, together with any comments from the sub-groups on the cases, to the IPCC Chairman for endorsement. For the more serious complaints that are handled by the Serious Complaints Committee, the IPCC Secretariat circulates the scrutinized investigation reports to members of the Serious Complaints Committee for examination and concurrently to all IPCC members for monitoring. After examination by the Serious Complaints Committee, the IPCC Secretariat submits the investigation reports, together with any comments for the Committee or IPCC members on the cases, to the IPCC Chairman for further examination and endorsement. If the IPCC Chairman, the sub-groups or the Serious Complaints Committee consider it necessary for the investigation report on a particular complaint to be further discussed by the full IPCC, it will be discussed at the IPCC's bi-monthly in-house meetings. Such cases may be further discussed at the bi-monthly joint IPCC/CAPO meetings as necessary.

233. Members have expressed concern about the present mode of operation as the majority of the cases are cleared by circulation of papers. Some members have suggested requiring that the classification of reportable complaints falling within certain criteria (e.g. serious complaints) must be considered by IPCC at meetings instead of by circulation of papers, and that IPCC should meet more frequently to consider such classification. They have also suggested requiring that a written resolution on such classification must be approved by a certain percentage of the total number of IPCC members and restricting IPCC's power of delegation under section 25 of Schedule 1 accordingly.

234. The Administration has responded that the arrangements in paragraph 232 above have been operating efficiently and effectively, and have enabled IPCC to closely monitor whether the Police handles and investigates reportable complaints in a fair and impartial manner. Both the Administration and the existing IPCC consider it appropriate to provide sufficient flexibility for IPCC to consider whether a particular matter (including the classification of an allegation or an investigation report of a reportable complaint) should be considered at meetings or by circulation of papers.

235. The Administration has also advised that the provision in section 11(4) of

Schedule 1 which provides for a written resolution that is approved by a majority of all IPCC members is valid and effectual has taken reference from similar legislative provisions applicable to many existing statutory bodies.

236. Hon James TO has proposed CSAs to require that serious complaints must be considered by IPCC at meetings.

Annual reports

237. In response to the suggestion of specifying the content of the annual report of IPCC in the Bill, the Administration has advised that section 23 of Schedule 1 provides that IPCC must submit to a report on the performance of its statutory functions for each financial year. The IPCC's functions are clearly stipulated in clause 7 of the Bill. Section 23 of Schedule 1 provides flexibility for IPCC to determine the contents of its annual report for illustrating how it has carried out its functions in monitoring the Police's handling and investigation of reportable complaints. Similar flexibility is provided to, for example, The Ombudsman, the Privacy Commissioner for Personal Data (Privacy Commissioner) and the Equal Opportunities Commission under their respective governing Ordinances.

238. Members have queried the reason for the requirement of the tabling of the IPCC's annual report at LegCo to be subject to CE's approval. The Administration has explained that for many statutory bodies, it is the Administration (instead of the statutory bodies) which will arrange the tabling of the annual reports, statements of accounts and audit reports of the statutory bodies in LegCo. The arrangement provided in section 23 (2) of Schedule 1 is comparable to the normal procedure applicable to other statutory bodies.

239. Hon James TO has proposed a CSA to remove the requirement for the tabling of the IPCC's annual report at LegCo to be approved by CE.

240. Having regard to members' suggestion, the Administration has agreed to add the element of "reasonableness" in allowing IPCC to submit its annual reports later than six months after the end of a financial year in section 23(1) of Schedule 1.

241. Hon James TO has proposed a CSA to remove the provision allowing IPCC to submit its annual report later than six months after the end of the financial year as permitted by CE.

Delegation of functions

242. Under section 25(1) of Schedule 1, IPCC may delegate its functions under the Bill to a committee, a member of IPCC, the Secretary, the Legal Adviser or any other employee of IPCC.

243. The existing IPCC considers that there is a need for IPCC to delegate some of its functions to a technical or professional person whose service is engaged by IPCC under clause 5(3), such as contracting out legal services in handling complicated cases or facing a lawsuit, and hiring a public relations firm to undertake publicity programmes, etc. IPCC may entrust a public relations firm to devise and execute a publicity plan (subject to IPCC's endorsement), rather than to simply tap the firm's advice, as it is not worthwhile for IPCC to employ a team of public relations staff on its establishment to launch the projects. Members and the existing IPCC have suggested that a provision similar to that in the Personal Data (Privacy) Ordinance (Cap. 486) (PDPO) be added to provide for IPCC to delegate some of its functions to a technical or professional person whose service is engaged by IPCC under clause 5(3).

244. The Administration has responded that notwithstanding the provisions in PDPO, the Privacy Commissioner has not delegated any of its functions to the technical or professional persons he engages. The arrangement proposed for IPCC is similar to that for some other statutory bodies which handle complaints made by members of the public, such as The Ombudsman, the Equal Opportunities Commission and the Consumer Council. While these three statutory bodies may engage the services of technical or professional persons to assist them in performing their statutory functions or to advise them on matters relating to the performance of their statutory functions, their governing Ordinance does not empower them to delegate their functions to the technical or professional persons they engage.

245. While appreciating that IPCC may need to engage persons other than its employees to provide technical or professional services, the Administration does not envisage that this would require IPCC to delegate any of its functions to such persons. For example, IPCC may need to engage a public relations firm to help promote public awareness of IPCC's role. While the public relations firm may draw up publicity programmes for the IPCC's consideration and implement the programmes upon the IPCC's endorsement, the function of promoting public awareness of the role of IPCC still rests with IPCC. As such, the Administration does not consider it necessary or appropriate to provide that IPCC may delegate its functions to external technical and professional persons who are not employees of IPCC. The existing IPCC has made no further comment on section 25(1) of Schedule 1.

246. Hon James TO has proposed CSAs to provide that IPCC may not delegate its functions under the Bill in respect of investigation reports, classifications and recommendations to the Secretary, the Legal Adviser or any other employee of IPCC.

Honorarium for Council members and observers

247. Section 5 of Schedule 1 provides for payment of fees and allowances to Chairman, Vice-Chairmen and members of IPCC. Section 4 of Schedule 2 provides for payment of fees and allowances to observers.

248. The Administration has informed members of its basic principle that service of non-official members of government advisory boards and committees is voluntary and, as a general rule, un-remunerated. However, at the same time, no individual should suffer a pecuniary embarrassment through public service nor should the Government be obtaining the services of highly qualified, professional persons "on the cheap". Based on these principles, IPCC members and observers are paid honorarium to cover travel, out-of-pocket and related expenses incurred by them in connection with their duties, taking into account the frequency of meetings, interviews and observations conducted. The rates on honorarium are regularly revised with reference to the movement of the Consumer Price Index. The current rates of honorarium for IPCC members and observers are: IPCC Chairman (\$3,330 per month), IPCC Vice-Chairman (\$2,070 per month), IPCC member (\$1,800 per month), and IPCC observer (\$180 per attendance). The Administration will continue to pay honorarium to members and observers of the statutory IPCC based on the aforementioned principles. The existing IPCC are content with such current levels of honorarium.

Application of The Ombudsman Ordinance (clause 44)

249. The Ombudsman Ordinance is applicable to all government departments and 18 statutory bodies listed in its Part I of Schedule 1. An organization listed in Part II of Schedule 1 to the Ordinance is subject to the scrutiny of The Ombudsman only in respect of maladministration relating to the Code on Access to Information (the Code) published by the Government. At present, the IPCC Secretariat is included in Part II of Schedule 1 to the Ordinance. Clause 44 of Bill provides for the removal of the IPCC Secretariat from this Part as a consequential amendment.

250. Members have raised query about the appropriateness to remove the IPCC Secretariat from Part II of Schedule 1 to The Ombudsman Ordinance, and sought the views of the Ombudsman on clause 44 and whether the statutory IPCC should be included in Part 1 of Schedule 1 to the Ordinance. They have pointed out that the LegCo Secretariat, the Equal Opportunities Commission and the Privacy Commissioner are also included in Part I of Schedule 1 to the Ordinance.

251. The Ombudsman informs the Bills Committee that it sees no need to remove the IPCC Secretariat from Part II of Schedule 1 to The Ombudsman Ordinance. ICAC, similarly a statutory body, has been and is still included in Part II for the purpose of the Code. Organizations listed in Part II of Schedule 1 are not subject to The Ombudsman's general jurisdiction in respect of complaints of maladministration, but are subject to scrutiny only in respect of complaint relating to the Code. The Ombudsman understands the Government's position that the Code applies only to government departments. Since the statutory IPCC and its Secretariat will not be part of Government, the Code should cease to apply to them. While there is logic in Government's position, The Ombudsman considers that the matter can be seen in a wider context. ICAC, a statutory body, has been subject to the Code since the latter's inception in 1996 and this has worked well in practice. The Ombudsman, therefore, sees no reason why the incorporated IPCC and its Secretariat could not be treated in the same way as ICAC.

252. Regarding Part 1 of Schedule 1, The Ombudsman has pointed out that the statutory bodies listed therein share the common features of being substantially funded by General Revenue or statutory fees or charges; performing administrative functions, and are not solely advisory, adjudicative or appellate in nature; and interface with or impact on the public in the course of discharging their functions. Upon the enactment of the Bill, the statutory IPCC will meet all the above criteria. The Ombudsman sees no objection in principle to bringing the statutory IPCC within her purview, but points out that the decision is ultimately one of policy.

253. The Administration has responded that the Code serves as a framework for the provision of information by government departments, defined to include any department, bureau, force, service unit, secretariat or other agency of the Government, however styled. Subject to the passage of the Bill, the statutory IPCC will have its own

secretariat and there will no longer be a government department in the name of the IPCC Secretariat. The Administration therefore does not consider it appropriate for the Government to mandate the application of the Code to the statutory IPCC. Instead, the statutory IPCC should be allowed to decide on the procedure and practice for handling requests for access to information as it sees fit. Hence, a consequential amendment to remove the IPCC Secretariat from Part II of Schedule 1 of The Ombudsman Ordinance is included in the Bill. While statutory bodies are encouraged to adopt the Code, it is entirely up to individual statutory bodies to consider whether the Code should apply to their handling of public request for information, having regard to their own operations and practices.

254. Regarding the inclusion of the statutory IPCC in Part 1 of Schedule 1 to The Ombudsman Ordinance, the Administration has explained that clause 44 presents a consequential amendment to reflect the establishment of IPCC as a statutory body, and as a corollary the cessation of the IPCC Secretariat as a government department. The Bill makes no change to the status of IPCC under the Ordinance, as IPCC itself is presently not covered by the Ordinance. In view of the purpose of the Bill, which is to codify the current two-tier system for the handling and investigation of police complaints, the Administration considers that issues concerning the ambit of the Ombudsman should be examined separately outside the context of the Bill. As there is a consultation process between the statutory bodies and the Administration on their inclusion in Part I of Schedule 1 to the Ordinance, the Administration is of the view that it would be reasonable to allow time for IPCC to consider whether it should be included in this Part.

255. Some members have pointed out that although POBO does not apply to the existing IPCC, clause 43 of the Bill includes the statutory IPCC in Schedule 1 to POBO. They consider that similar arrangement should be adopted by including the statutory IPCC in Part 1 of Schedule 1 to The Ombudsman Ordinance. They are of the view that the IPCC Secretariat should not be removed from Part II of Schedule 1 to the Ordinance.

256. Hon James TO has indicated that he will propose CSAs to include IPCC under Part I of Schedule 1 of The Ombudsman Ordinance, and the statutory IPCC Secretariat under Part II of Schedule 1 of the Ordinance.

Commencement of the Bill

257. Having considered the existing IPCC's suggestion, the Administration will add a provision in the Bill so that the Administration may appoint a commencement date for the Bill after its enactment, subject to the IPCC's readiness and the progress of the IPCC's preparatory arrangements for its operation as a statutory body.

Establishment of and financial provision for the statutory Council

Views of IPCC

258. The existing IPCC has proposed that six new posts should be added to its Secretariat. The Secretary to the statutory IPCC should be upgraded from the existing rank of Administrative Officer Grade C (Directorate Pay Scale Point 2 with a monthly salary of \$115,450 to \$122,600) to the equivalent of Directorate Pay Scale Point 3 (monthly salary of \$134,250 to \$142,250). Pending recruitment of IPCC's own staff and until they are ready and capable to take up the duties, the Administration should provide adequate civil servants to staff the Secretariat. Detailed terms of employment of IPCC staff should be a matter for the statutory IPCC to decide.

259. In addition to IPCC 's existing provision under Head 121 (i.e. \$16,526,000), an one-off provision of \$3,700,000 and additional recurrent provision of \$14,400,000 should be made to cover staff costs arising from the six additional posts and upgrading of the IPCC Secretary post. Additional funding should be provided to cover any rental increase for office accommodation, and other unforeseen expenses.

Views of members of the Bills Committee

260. Members consider that the statutory IPCC should be provided with sufficient resources to enable it to effectively discharge its functions under the Bill. Some members have expressed reservations as to whether the Bill should be enacted without the Administration' firm commitment to provide the statutory IPCC with the required additional resources. Some members are of the view that the financial arrangements should be resolved before the Bills' enactment. Some members consider that IPCC should directly express its views to the centre on matters relating to its financial allocation and IPCC's representatives should be allowed to attend meetings when bids for additional financial resources are considered.

Views of the Administration

261. The financial provision for IPCC is currently set out under a separate head of expenditure (Head 121) in the Government's annual Estimates. To reflect the independence of the statutory IPCC, the intention is that Head 121 should be retained to set out all money paid by the Government to the Council and appropriated for that purpose by the LegCo. The financial allocation to the statutory IPCC will be shown in the form of a one-line vote with the Secretary (to be retitled "Secretary-General") to the Council continuing to be the Controlling Officer. These arrangements are modelled on those currently applicable to the management of the finances of the Office of the Ombudsman.

262. To facilitate IPCC to discharge its functions of monitoring the CAPO's handling and investigation of reportable complaints, the Administration is committed to ensuring

that the statutory IPCC will continue to be provided with appropriate support and resources under the new regime. The Administration envisages that IPCC will be provided with no less than the current level of financial resources on becoming a statutory body. Any requests for additional resources will be subject to the established resource bidding procedures in the normal manner. In this regard, the Administration will advise the statutory IPCC annually of the time and manner in which the relevant resource allocation exercises and estimates of expenditure are to be conducted/prepared to facilitate the statutory IPCC to consider the level of financial provision needed for the subsequent financial year and to prepare resource bids when necessary.

263. Bids for additional financial resources from all government bureaux/departments and government-funded bodies, including those from the statutory IPCC in future, will be considered at a high-level forum, with the personal participation of both the Chief Secretary for Administration and the Financial Secretary. Directors of Bureaux may attend before such a forum to appeal against any decisions on their bids for resources. In the event that the statutory IPCC wishes to lodge such an appeal, S for S as the point of contact between the statutory IPCC and the Administration, will invite the Secretary-General to the statutory IPCC (being the Controlling Officer for the IPCC's head of expenditure) to present his case personally.

Financial allocation

264. Some members have suggested that the annual financial allocation to the statutory IPCC should be subsumed under the operating expenditure envelope of the Director of Administration. They are concerned that S for S might vary or adjust the financial provision to the statutory IPCC, thus hampering its discharge of functions under the Bill.

265. The Administration has explained that under the Government's operating expenditure envelope approach, the operating expenditure for the head of expenditure is allocated through the operating expenditure envelope of the respective Director of Bureau as the envelope-holder. Thus, for the financial provision for allocation to the statutory IPCC, the operating expenditure envelope system requires the provision to be channelled through the envelope of S for S since the Security Bureau will act as the primary point of contact between the Administration and the statutory IPCC. This is by nature a matter of accounting practice. S for S will not vary or adjust the financial provision allocated by the centre to the statutory IPCC. When consulted, the Administration Wing has advised that the aforementioned arrangement is appropriate and should be maintained.

Committee Stage amendments

266. Apart from the CSAs referred to in the above paragraphs, the Administration will move other minor or textual amendments to the Bill.

267. Apart from the CSAs referred to in the above paragraphs, Hon James TO has proposed other amendments to the Bill.

Requests for the Administration's elaboration during the resumed debate on the Bill

268. The Bills Committee has requested S for S to explain the Administration's stance on the following issues during the resumption of the Second Reading debate on the Bill

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- (a) state that clause 20(1)(a) covers information and materials in respect of any allegation arising from a reportable complaint that is classified as "Substantiated other than reported" in an investigation report (paragraph 124 above refers);
- (b) state that IPCC is sufficiently empowered under clause 7(2) to reasonably require CP to compile and submit statistics about conduct of members of the police force that are unrelated to specific reportable complaints but that might lead to reportable complaints (paragraph 153 above refers); and
- (c) explain that the Administration will not appoint immediate family members of members of the police force as observers (paragraph 206 above refers).

Follow-up actions by the Administration and IPCC Secretariat

269. The Bills Committee has requested the Administration and the IPCC Secretariat to revert to the Panel on Security one year after the enactment of the Bill on -

- (a) the guidelines for observers and the improved forms for completion by an observer after an observation has been conducted as well as detailed statistics of visits conducted by observers (paragraph 217 above refers); and
- (b) the improved version of the Disciplinary and Criminal Checklist (paragraph 149 above refers).

Consultation with the House Committee

270. The Bills Committee has consulted the House Committee and obtained its support for the Second Reading debate on the Bill to be resumed at the Council meeting of 9 July 2008.

Council Business Division 2
Legislative Council Secretariat
3 July 2008

Bills Committee on Independent Police Complaints Council Bill

Membership list

Chairman Hon LAU Kong-wah, JP

Members Hon LEE Cheuk-yan
Dr Hon LUI Ming-wah, SBS, JP
Hon Margaret NG
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon James TO Kun-sun
Hon Bernard CHAN, GBS, JP
Dr Hon Philip WONG Yu-hong, GBS
Hon WONG Yung-kan, SBS, JP
Hon Howard YOUNG, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon Timothy FOK Tsun-ting, GBS, JP
Hon TAM Yiu-chung, GBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Dr Hon Joseph LEE Kok-long, JP (since 23 October 2007)
Hon Daniel LAM Wai-keung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon KWONG Chi-kin

(Total : 20 Members)

Clerk Mrs Sharon TONG LEE Yin-ping

Legal Adviser Mr LEE Yu-sung

Date 23 October 2007

Bills Committee on Independent Police Complaints Council Bill

A. Organizations which have given oral representation to the Bills Committee

1. Hong Kong Human Rights Monitor
2. Action for REACH OUT
3. Civil Human Rights Front
4. Zi Teng
5. JJJ Association

B. Organizations/individual who have provided written submissions only

1. Hong Kong Christian Institute
2. Hong Kong Unison Limited
3. Hong Kong Bar Association
4. The Law Society of Hong Kong
5. Mr LEUNG Hoi-peng