

**President's ruling on  
Committee Stage amendments to  
Independent Police Complaints Council Bill  
proposed by Hon James TO Kun-sun and Hon LEE Wing-tat**

Hon James TO Kun-sun and Hon LEE Wing-tat have given notice to move Committee Stage amendments (CSAs) to the Independent Police Complaints Council Bill (the Bill), if the motion for the Second Reading of the Bill is agreed to at the meeting of the Legislative Council (LegCo) of 9 July 2008. Before making a ruling on the admissibility of these CSAs, I have invited the Secretary for Security (S for S) to offer his comments on the CSAs, and the Members concerned to offer their responses. I have also sought the advice of Counsel to the Legislature.

**Relevant rules in the Rules of Procedure**

2. In commenting on the Members' proposed CSAs, S for S has referred to Rule 57(4)(a) and (e) as well as Rule 57(6) of the Rules of Procedure (RoP).

3. Rule 57(4)(a) provides that:

"An amendment must be relevant to the subject matter of the bill and to the subject matter of the clause to which it relates."

4. Rule 57(4)(e) provides that:

"Where an amendment is proposed to be moved to a bill presented in both official languages the amendment shall be made to the text in each language unless it is an amendment that clearly affects the text in one language only. But an amendment which creates a conflict or discrepancy between the text in one language and the text in the other may not be moved."

5. Rule 57(6) provides that:

"An amendment, the object or effect of which may, in the opinion of the President or Chairman, be to dispose of or charge any part of the revenue or other public moneys of Hong Kong shall be proposed only by –

(a) the Chief Executive; or

(b) a designated public officer; or

- (c) a Member, if the Chief Executive consents in writing to the proposal."

### **The Administration's views and the Members' responses**

6. S for S considers that the Members' CSAs set out in the **Appendix** are not admissible under Rules 57(4) and/or 57(6) of RoP. Mr TO and Mr LEE do not agree to S for S's views. Mr LEE has adopted Mr TO's views. S for S's comments on the proposed CSAs and Mr TO's responses to the comments are also summarized in the Appendix. (For easy reference, the CSAs set out in the Appendix are itemized by letters (a), (b) and so on.)

### **Advice of Counsel to the Legislature and my ruling**

7. Counsel's advice and my ruling on the proposed CSAs are in the ensuing paragraphs.

#### Hon James TO Kun-sun 's proposed CSAs

8. The purposes of the Bill as set out in the long title of the Bill are to incorporate the existing Independent Police Complaints Council (IPCC); to provide for IPCC's functions of observing and monitoring the handling and investigation of reportable complaints by the Commissioner of Police (CP); to provide for IPCC's powers relating to its affairs and operation; to provide for the appointment of observers in relation to reportable complaints; and to provide for connected matters.

9. Counsel advises that clause 7 of the Bill is the key provision of the Bill, which provides for the functions of IPCC by having them listed in subclauses (1)(a) to (f). Clause 7(2) empowers IPCC to "do all such things that are reasonably necessary for, or incidental or conducive to, the performance of its functions". This provision sets the scope of the Bill in so far as it relates to the functions of IPCC, as the long title makes it clear that one of the purposes of the Bill is to provide for the functions of observing and monitoring the handling and investigation of reportable complaints by CP.

#### *Proposed CSA to clause 7(1)(a) [CSA (b) in the Appendix]*

10. Counsel explains that the proposed CSA to clause 7(1)(a) seeks, by substituting the paragraph by a new one, to provide IPCC with the function to receive and investigate complaints made against the police force. As this proposed function would change IPCC to a body that would be more than monitoring and advisory in nature, Counsel considers that the proposed CSA should be considered as beyond the scope of the Bill.

11. It is very clear to me that the proposed CSA seeks to fundamentally change the function of IPCC from one of monitoring the handling and investigation of reportable complaints against members of the police force to one of investigating complaints made to CP. I consider that the proposed CSA to clause 7(1)(a) is outside the scope of the Bill.

*Proposed CSA to add paragraph (g) to clause 7(1) [CSA (v) in the Appendix]*

12. The functions of IPCC are provided in clause 7(1)(a) to (f). The proposed CSA to add clause 7(1)(g) is to add a function as follows: "to promote public awareness of monitoring the police force". Counsel advises that the procedural issue for consideration is whether the proposed function is incidental or so closely related to the functions provided in clause 7(1)(a) to (f) that it should be regarded as within the scope of the Bill.

13. S for S submits that this is a new function which is unrelated to the handling of police complaints. He is also of the view that additional resources would be required for the effective discharge of the proposed new function.

14. Mr TO argues that the proposed new function is within the legislative intent underlying the Bill, namely, "to enhance public confidence in the present police complaints system by establishing a statutory IPCC and provide for checks and balances on the police force so as to prevent the police force from abuse of its power", and he points out that it is very similar to subclause (1)(e) which provides IPCC with the function of promoting public awareness of the role of IPCC.

15. Counsel is of the view that Mr TO's arguments are essentially points of merit. The proposed CSA is different in nature from subclause (1)(e). Counsel considers that the proposed CSA should be considered as outside the scope of the Bill.

16. I consider that promoting public awareness of monitoring the police force and promoting public awareness of the role of IPCC are quite separate matters. I accept Counsel's advice that Mr TO's arguments go to the merit of his proposal. It is my opinion that the proposed CSA is outside the scope of the Bill.

*Proposed CSAs to add new clauses 7A to 7D [CSA (c) in the Appendix]*

17. Counsel considers that the proposed new clauses 7A, 7B, 7C and 7D are predicated on the assumption that the proposed addition to clause 7(1) of the function to investigate complaints is admissible and passed. They seek to provide IPCC with the power to summon any person and to examine them on oath (new clause 7A), to provide for privileges and rights of witnesses when

giving evidence before IPCC (new clause 7B), to provide for IPCC to continue investigation notwithstanding withdrawal of complaint (new clause 7C), and to create offences including the obstruction of IPCC, failure to comply with requirements of IPCC and making false statements to IPCC (new clause 7D).

18. Counsel considers that the proposed CSAs to add the above new clauses should be considered together with the proposed CSA to clause 7(1)(a). Should I rule that the latter not admissible, the same should apply to them.

19. I have already stated in paragraph 11 above that I consider that the proposed CSA to clause 7(1)(a) is outside the scope of the Bill. For the same reason, I consider these proposed new clauses to be outside the scope of the Bill.

*Proposed CSAs to clause 19(1) and (2)[CSAs (d) and (e) in the Appendix]*

20. Counsel points out that according to the Explanatory Memorandum to the Bill, clauses 16 to 19 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. Clause 19 confers power on IPCC to interview any person for information or other assistance in relation to the investigation report.

21. Counsel explains that the proposed CSAs seek to change the purpose of the interview conducted under clause 19(1) and (2) from considering investigation reports to performing functions under clause 7(1)(a), (b), (c) or (d), and to remove the requirement for consent of CP for interviews that IPCC may conduct after an interim investigation report has been submitted by CP to IPCC under clause 17.

22. In Counsel's view, IPCC's power to interview for the purpose of consideration of an investigation or interim investigation report is part of the monitoring scheme established under Division 2 of Part 3 of the Bill. Whilst a proposed CSA to amend the purpose of an interview to performing functions under clause 7(1)(a) to (d) of the Bill would be relevant to the subject matter of the Bill, it is not relevant to that of the clauses that the proposed CSAs respectively relate. Counsel advises that the proposed CSA should not be admissible.

23. Given the heading of Division 2 of Part 3 and paragraph 9 of the Explanatory Memorandum to the Bill referred to by Counsel in paragraph 20 above, I am persuaded that interviews which may be conducted by IPCC pursuant to clause 19 are intended to be restricted to those conducted only for the purpose of considering the investigation or interim investigation reports. As the proposed CSAs seek to confer on IPCC the power to conduct interviews for the purpose of performing its functions under clause 7(1)(a) to (d), I consider that they are clearly beyond the scope of clause 19.

*Proposed CSA to clause 7(1)(b) [CSA (f) in the Appendix]*

24. Counsel points out that the proposed CSA would bring about a fundamental change to the function provided in clause 7(1)(b). Under clause 7(1)(b), IPCC's function 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 CP or the Chief Executive (CE) of its opinion on such actions. The proposed CSA would change that function to determining whether findings and results of any investigation in respect of a complaint (not just reportable complaints) submitted by CP may be endorsed or not and to make its own findings, and to advise CP or CE on the action taken or to be taken by CP in respect of any member of the police force in connection with that complaint. Such proposed fundamental change goes beyond the scope of clause 7(1)(b) and should not be admissible.

25. I consider that IPCC's function under clause 7(1)(b) is in respect of reportable complaints only. Mr TO's proposed CSA is outside the scope of the clause as the CSA seeks to change that function to cover, among other things, all types of complaints.

*Proposed CSA to add subclause (3) to clause 7 [CSA (x) in the Appendix]*

26. Counsel explains that the proposed new clause 7(3) empowers IPCC to require CP to do all such things that are reasonably necessary to assist IPCC in performing its functions. It is a new power that would be conferred on IPCC and correspondingly a new duty imposed on CP. Counsel considers that it is reasonable to assume that it would require public expenditure by CP to do such things as required by IPCC. In view of the breadth of the provision, it may be reasonable to form the opinion that the additional expenditure required for CP to carry out the new duties pursuant to the new clause 7(3) is likely to be substantial and not just nominal. Counsel would advise that the proposed new clause 7(3) would have charging effect.

27. Mr TO submits that this new power is a "reserved" power to be exercised by IPCC, "presumably only in exceptional cases when it comes to actual difficulty in performing its function under the Bill. Supposedly, this power is IPCC's last resort and will not cause substantial charging effect under Rule 57(6) of RoP".

28. In my past rulings, I ruled that a CSA which would create a new function would have charging effect, unless the public expenditure required for performing that function is nominal. As the power proposed by the CSA to be conferred on IPCC has a broad ambit and is general in nature, I accept Counsel's view that additional expenditure would be required in the performance of this new duty by CP, and the amount involved is likely to be substantial.

*Proposed CSAs to clauses 11(b) and 15(3) [CSAs (g) and (h) in the Appendix]*

29. Clause 11(b) of the Bill provides for the situation where a complaint that is made to CP after the expiry of the relevant periods stipulated in clause 11(a) may be categorized as reportable complaints only if it is of a serious nature in the opinion of CP. Mr TO's proposed CSA seeks to replace CP by IPCC as the body which forms the relevant opinion.

30. Under clause 15(3), IPCC has the power to require CP to provide explanations to support his categorization of a complaint as non-reportable, or his opinion that a belated complaint should be categorized as non-reportable because it is not of a serious nature. Counsel explains that the effect of the proposed CSA is to empower IPCC to categorize the complaint after considering the explanation of CP, and to require CP to handle and investigate the complaint according to IPCC's decision.

31. S for S submits that the proposed CSAs are outside the scope of the Bill because it is clear from the Bill that IPCC is a monitoring and advisory body and the Bill does not contain any provision which empowers IPCC to determine matters on the categorization or classification of complaints. Any proposed CSA that would change the monitoring and advisory nature of IPCC would be outside the scope of the Bill. To give IPCC the power to determine a complaint as reportable should fall outside the scope of the Bill.

32. Counsel is of the view that Mr TO's proposal to give IPCC the power to determine if a belated complaint should be categorized as reportable complaint does not necessarily fall outside the scope of the Bill. The proposed CSA could be regarded as an amendment to the details of the Bill and hence should be admissible.

33. Counsel considers that the proposed CSA to clause 15(3) could be regarded as one that goes to the details concerning the mode of operation of IPCC in performing its function as the monitoring and advisory body overseeing CP's handling of complaints. The proposed CSA should therefore be relevant to the subject matter of the Bill and clause 15(3).

34. IPCC having the power to classify or categorize a complaint, as proposed by Mr TO in his CSAs, is not necessarily in conflict with its monitoring and advisory role. I do not consider that the proposed CSAs are outside the scope of the Bill.

*Proposed CSA to clause 18 [CSA (i) in the Appendix]*

35. Counsel explains that the proposed CSA to clause 18 is to add new subclauses (1A) to the clause. The effect of the new subclause (1A) is to require CP to comply with and adopt the classification of complaint as

recommended by IPCC. Classification is defined as "the classification after investigation by the Commissioner 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 the Council and the Commissioner". Counsel considers that despite the retention of the key word "recommendation" to describe IPCC's advice on an investigation report, the fact that CP has an obligation to follow the recommendation would change the nature of IPCC to more than monitoring and advisory. This change appears to be so fundamental that the CSA should be considered as falling outside the scope of the Bill.

36. My view is that any proposal to change the monitoring and advisory nature of IPCC is outside the scope of this Bill. It is hard to argue that IPCC is only performing a monitoring and advisory role when CP has an obligation to follow the "recommendation" of IPCC on an investigation report. I consider that the proposed CSA is outside the scope of the Bill.

*Proposed CSAs to clauses 9(a), 10(c) and 10(d) [CSAs (k) to (m) in the Appendix]*

37. Counsel points out that under clause 9, CP must not take into account a complaint made by a person in his official capacity as a member of the police force when compiling lists of reportable and non-reportable complaints. The proposed CSA makes an exception to this rule so that where a complaint relates to police conduct while on duty or in the purported execution of duties, or conduct of a police officer who identified himself as a police officer while off duty, or any practice or procedure adopted by the police force, then that complaint would be taken into account. This proposed CSA would result in an increase in the number of complaints which may be subject to IPCC's monitoring and advisory function.

38. Counsel explains that the proposed CSAs to clause 10(c) and (d) add two more types of complaints that must be categorized as reportable complaints. Clause 10(c) covers complaints made by or on behalf of a complainant directly affected by the police conduct. The proposed CSA adds to clause 10(c) complaints concerning complainants who are indirectly affected. The proposed CSA to delete clause 10(d) would result in having anonymous complaints categorized as reportable complaints provided that they satisfied the other conditions specified in clause 10(a), (b), (c) and (e).

39. S for S submits that the proposed CSAs to clauses 9(a), 10(c), and 10(d) would have charging effect on the ground that the Police would incur additional resources for preparing investigation reports for submission to IPCC and responding to IPCC's requirements for additional information, clarification and materials, etc. According to S for S's analysis, additional resources required for CP to handle and investigate these complaints would amount to

\$5.8 million per year. Mr TO doubts the accuracy of the estimate provided by S for S, arguing that either complaints added by these proposed CSAs already have to be handled at present, or when compared to other reportable complaints covered by the Bill, they would require less resources to handle or investigate. He is not convinced that his proposed CSAs are likely to have a substantial charging effect.

40. Counsel is of the view that the submission and the estimate presented by S for S could be accepted. What is required of S for S to substantiate his claim is to show that the effect of the proposed CSAs on public money is likely to be substantial and not just nominal.

41. I consider that the proposed CSAs would result in an increase in the number of complaints required to be categorized as reportable complaints and subject to the remit of IPCC. Additional resources would clearly be required by CP to carry out his duties under the Bill in respect of these additional complaints. Having considered S for S's estimate, I am satisfied that the additional resources required are likely to be substantial and not just nominal. I am of the opinion that the proposed CSAs to clauses 9(a), 10(c), and 10(d) have charging effect.

*Proposed CSA to clause 20(1)(a)[CSA (n) in the Appendix]*

42. Counsel points out that the proposed CSA to clause 20(1)(a) would enable IPCC to require CP to provide information or material relating to a complaint made to CP (instead of relating to a reportable complaint).

43. S for S considers that the proposed CSA falls outside the scope of the Bill alongside the proposed CSAs to clauses 9(a), 10(c) and 10(d) as the power to require information or material would be extended to non-reportable complaints.

44. In Counsel's view, the subject matter of clause 20 concerns IPCC's power to require from CP information and material relating to reportable complaints only for the purpose of clarifying any fact or discrepancy relating to a reportable complaint. Any proposed CSA having the effect of applying such power to complaints other than reportable complaints as well will fall outside the scope of the clause.

45. I accept Counsel's view.

*Proposed CSAs to clauses 8(1), 17(1), 17(2) and 17(3)(b) and section 11 of Schedule 1 [CSAs (o) to (u) in the Appendix]*

46. Under clause 8(1), CP must submit to IPCC, at such intervals and in such manner as CP and IPCC may agree, a list each of reportable and



non-reportable complaints. Mr TO's proposed CSA empowers IPCC to decide on the intervals and manner of submission.

47. Under clause 17(1), an interim investigation report is required to be submitted by CP to IPCC 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 agreed by CP and IPCC. Under clause 17(2), a further interim report is required, until the completion of the investigation, to be submitted by CP every six months, or such shorter period as agreed by CP and IPCC.

48. The proposed CSAs to the above subclauses prescribe a period of four months and allow IPCC to unilaterally decide on an even shorter period for CP to comply with.

49. Mr TO seeks to move a CSA to subclause (3)(b) of clause 17 for consistency as the subclause has a reference to the interval specified in subclauses (1) and (2) of the same clause and he is seeking to change that interval.

50. Section 11(3) of Schedule 1 provides that "... anything that may be done at a meeting of the Council may be done by circulation of papers to all members of the Council without a meeting.". The proposed CSA to section 11 adds a new subsection (5A) to stipulate that certain specified matters must be decided at a meeting.

51. Counsel considers that the proposed CSAs to clauses 8(1), 17(1), 17(2), and 17(3)(b) concern operational details relating to reporting periods and the power to decide the shorter periods required for completion of investigation. The proposed CSA to section 11(3) of Schedule 1 concerns procedural matters relating to the operation of IPCC.

52. Counsel points out that while S for S considers these proposed CSAs have a charging effect, the only information that he has provided is an assertion that there will be additional recurrent subvention which is difficult to be quantified with precision. In order to establish the case that the proposed CSAs have charging effect, S for S should provide information more than what amounts to a bare assertion to satisfy the President that the additional expenditure required for meeting the modified requirements is likely to be substantial and not just nominal. In Counsel's view, there may not be sufficient information for the President to form the opinion that the proposed CSAs have charging effect.

53. S for S has not provided me with any estimate of expenditure that would be required to support the additional workload of the Complaints Against Police Office and IPCC. He merely submits that there will be additional recurrent subvention which is difficult to be quantified with

precision. I consider that there is insufficient ground for me to rely on such a statement by S for S to form the opinion that the proposed CSAs have charging effect.

*Proposed CSA to clause 26 [CSAs (w) in the Appendix]*

54. Under clause 26(1) and (2), IPCC may require CP to consult it before making or amending certain police orders and manuals in so far as the new orders etc. and amendments relate to the handling or investigation of reportable complaints. The proposed CSA adds a new clause 26(3) which empowers IPCC to require CP to consult it even if the new orders or manuals or the amendments do not relate to the handling or investigation of reportable complaints.

55. In Counsel's view, it is quite clear that the subject matter of clause 26 is on IPCC's power to require CP to consult IPCC on orders and manuals relating to the handling or investigation of reportable complaints. A proposed CSA to extend the subject of consultation to include non-reportable complaint related police orders and manuals is outside the scope of the clause.

56. I accept Counsel's view. What Mr TO's proposed CSA seeks to achieve is clearly outside the scope of the clause.

*Proposed CSAs to clause 44 [CSAs (y) and (z) in the Appendix]*

57. Counsel points out that the "Secretariat of the Independent Police Complaints Council" is set out in Part II of Schedule 1 to The Ombudsman Ordinance (Cap. 397) as one of the organizations in respect of which The Ombudsman is empowered under section 7(1)(b) of the same Ordinance to investigate its performance of functions in relation to the Code on Access to Information published by the Government.

58. Counsel further points out that clause 44 of the Bill is one of the consequential amendments in Part 7 of the Bill. Clause 44 repeals the reference to "Secretariat of the Independent Police Complaints Council" so that The Ombudsman's power under section 7(1)(b) of Cap. 397 would not cover the Secretariat.

59. Counsel explains that Mr TO's proposed CSAs to clause 44 seek:

- (a) to substitute the Secretariat by IPCC so that the latter would be subject to section 7(1)(b) of Cap. 397; and
- (b) to add IPCC to Part I of Schedule 1 to Cap. 397 so that it would be subject to the jurisdiction of The Ombudsman under

section 7(1)(a) of Cap. 397 in relation to its exercise of administrative functions.

60. In Counsel's view, the subject matter dealt with by the proposed CSAs as referred to in the last paragraph should be within the scope of the Bill as it could be considered as matters of detail connected with the incorporation of IPCC. However, the proposed CSAs are not relevant to the subject matter of clause 44, and for that reason, they should not be admissible under Rule 57(4)(a) of RoP.

61. I accept Counsel's advice that what Mr TO's CSAs seek to achieve is not relevant to the subject matter of clause 44.

*Proposed CSA to add new clause 26A [CSAs (aa) in the Appendix]*

62. This new clause would empower IPCC to refer any matter in respect of a complaint to the Secretary for Justice and, in the English text of the proposed CSA, to the Commissioner of the Independent Commission Against Corruption (ICAC). However, in the Chinese text, the corresponding reference is "申訴專員" (The Ombudsman) instead of the Commissioner of ICAC.

63. S for S argues that the proposed CSA should not be admissible under Rule 57(4)(e) of RoP because there is inconsistency between the two texts.

64. Rule 57(4)(e) provides that: "Where an amendment is proposed to be moved to a bill presented in both official languages the amendment shall be made to the text in each language unless it is an amendment that clearly affects the text in one language only. But an amendment which creates a conflict or discrepancy between the text in one language and the text in the other may not be moved."

65. In Counsel's view, the "amendment" referred to in the second sentence of this subrule refers to proposed CSAs to one of the two language texts only. It does not apply to a proposed amendment which is in both the Chinese and English languages.

66. Mr TO is aware of the discrepancy. In his response to S for S's comments, he said that "the inconsistency would be reconciled after making technical changes". Counsel advises that I may wish to consider if this proposed CSA should be admissible after having heard from Mr TO the reasons why he should be allowed to rectify the discrepancy.

67. I earlier instructed the LegCo Secretariat to inform Mr TO that if he wished me to consider, before making my ruling, the reasons why he should be allowed to rectify the discrepancy, he should let me know the reasons by 5:00

pm on 9 July 2008. He subsequently wrote to me explaining that the discrepancy was "caused by a clerical error" by his office's law draftsman.

68. I am not satisfied that the discrepancy can be taken as the result of a clerical error. I cannot allow this CSA because if it was passed, there would be obvious discrepancy in substance between the English and the Chinese texts of the enacted ordinance.

*Proposed CSAs to the long title [CSAs (a) and (j) in the Appendix]*

69. Counsel points out that under Rule 50(3) of RoP, the long title of a bill is to set out the purposes of a bill in general terms. It is not subject to amendment at Committee Stage of the bill unless an amendment made to the provisions in the bill makes it necessary to do so or for some other technical reasons such as to improve the language or to clarify a certain point which is within the scope of the bill. Proposed amendments to the long title to enlarge the scope of a bill or on the assumption that proposed CSAs to provisions of the bill, which could only be admissible if the scope of the bill had been so enlarged, would be passed should not be admissible under RoP.

70. The long title of the Bill reads: "Incorporate the existing Independent Police Complaints Council; to provide for the Council's functions of observing and monitoring the handling and investigation of reportable complaints by the Commissioner of Police; to provide for the Council's powers relating to its affairs and operation; to provide for the appointment of observers in relation to reportable complaints; and to provide for connected matters."

71. There are three CSAs proposed by Mr TO to the long title. The first one is to substitute "Incorporate the existing Independent Police Complaints Council" by "With the objective of preventing abuse of power by the police force, establish an Independent Police Complaints Council as a statutory body". The combined effect of the second and third CSAs is to change IPCC's functions from "observing and monitoring the handling and investigation of reportable complaints by the Commissioner of Police", to "investigating, reviewing and monitoring complaints made to the Commissioner of Police".

72. S for S submits that the second and third proposed CSAs to the long title are outside the scope of the Bills and should not be admissible.

73. Counsel advises that in relation to the second and third proposed CSAs to the long title, they are amendments which clearly refers to matters beyond the scope of the Bill as investigating complaints made to CP is not one of the functions provided in clause 7 of the Bill. They should not be admissible.

74. As I have already ruled out the related CSAs proposed by Mr TO (please refer to paragraphs 8 to 11 and 17 to 23 above), it follows that the second and third CSAs proposed to the long title by Mr TO are not admissible.

Hon LEE Wing-tat's proposed CSAs

*Proposed CSA to clause 7(1)(a), to add paragraph (ba) to clause 7(1) and new clauses 7A to 7D [CSAs (ac) to (ae) in the Appendix]*

75. Counsel explains that the proposed CSA to clause 7(1)(a) seeks to change IPCC's functions of observing and monitoring the handling of reportable complaints to "investigate, monitor and review the manner in which reportable complaints are handled or investigated" by CP.

76. The new subclause (ba) proposed to be added to clause 7(1) would make it a function of the IPCC to "investigate a complaint where it is not satisfied with the investigation reports submitted by the Commissioner under section 16 or 17 in respect of such complaint".

77. Counsel further explains that proposed new clauses 7A to 7D are provisions on IPCC's power to summon, the protection of witnesses, IPCC's power to undertake or continue investigation notwithstanding a withdrawal of complaint and offences relating to IPCC's power of investigation. Counsel considers that it is clear that these provisions are to complement the new investigation power proposed in the other proposed CSAs.

78. Counsel advises that for the reason that the proposed powers of investigation conferred on IPCC would change the nature of IPCC fundamentally, he is of the view that the proposed CSAs to clause 7 are outside the scope of the Bill. The proposed new clauses 7A to 7D would, for the same reason, be outside the scope of the Bill.

79. Similar to Mr TO's proposed CSAs discussed in paragraph 10 and 11 above, Mr LEE's proposed CSAs seek to change the role of IPCC from one of monitoring and advisory to one of investigation. I consider that the proposed CSAs are outside the scope of the Bill.

*Proposed CSA to the long title [CSA (ab) in the Appendix]*

80. The proposed CSA seeks to amend "the Council's functions of observing and monitoring the handling and investigation of reportable complaints by the Commissioner of Police" in the long title to read "the Council's functions of observing and monitoring the handling and investigation of complaints made to the Commissioner of Police". This would change the subject of observing and monitoring by IPCC to all kinds of complaints made to CP instead of just reportable complaints. Counsel advises that the proposed CSA would change IPCC's functions as set out in the long title of the Bill into ones which are not provided in the Bill and should not be admissible.

81. I accept Counsel's advice.

82. Having considered S for S's comments, the Members' responses and the advice of Counsel to the Legislature, my ruling is set out as follows:

- (a) Hon James TO's following CSAs are admissible: CSAs to clauses 8(1), 11(b), 15(3), 17(1), 17(2) and 17(3)(b) as well as section 11 of Schedule 1;
- (b) Hon James TO's following CSAs are not admissible: CSA to add subclause (g) to clause 7(1), CSAs to clauses 7(1)(a) and (b), 18, 19(1) and (2), 20(1)(a), 26 and 44, CSAs to add new clauses 7A, 7B, 7C and 7D, as they are not relevant to the subject matter of the clause concerned / Bill under Rule 57(4)(a) of RoP;
- (c) Hon James TO's CSA to add subclause (3) to clause 7 and CSAs to 9(a), 10(c) and 10(d) have charging effect under Rule 57(6) of RoP, and may only be moved with the written consent of CE;
- (d) Hon James TO may not move his CSA to add new clause 26A to the Bill;
- (e) Hon LEE Wing-tat's following CSAs are not admissible: CSA to clause 7(1)(a) , CSAs to add paragraph (ba) to clause 7(1), and to add new clauses 7A, 7B, 7C and 7D, as they are not relevant to the subject matter of the Bill under Rule 57(4)(a) of RoP; and
- (f) for reasons stated in paragraphs 74 and 80, Hon James TO's second and third CSAs to the long title and Hon LEE Wing-tat's CSA to the long title are not admissible.

( Mrs Rita FAN )  
President  
Legislative Council

10 July 2008

**Independent Police Complaints Council Bill**

**Summary of Members' proposed Committee Stage amendments (CSAs)  
for which Secretary for Security has made comments, such comments and Members' responses to them**

CSAs	Secretary for Security	Members' responses
<b>(1) Hon James TO Kun-sun</b>		
<p>(a) to amend the long title (<i>second CSA</i>)</p> <p>(b) to amend clause 7(1)(a)</p> <p>(c) to add new clauses 7A to 7D</p> <p>(d) to amend clause 19(1)</p> <p>(e) to amend clause 19(2)</p>	<p>1. As set out in the long title and the explanatory memorandum of the Bill and explained in the LegCo Brief, the main object of the Bill is to incorporate the existing IPCC<sup>1</sup> and to provide for the statutory IPCC to continue with its functions of observing and monitoring the handling and investigation of reportable complaints<sup>2</sup> by the Police and its powers, but as an incorporated body. The purpose of the Bill is to codify the existing two-tier system for handling public complaints made against members of the police force. The various provisions in the Bill clearly stipulate IPCC's functions and powers (such as clauses 7 and 15 to 26) as a monitoring body. It is neither the Administration's policy intention nor the object of the Bill to empower IPCC to investigate reportable complaints.</p> <p>2. Under the existing two-tier police complaints system, CAPO of the Police is responsible for</p>	<p>1. Before stating that “the object of the Bill is to incorporate the existing IPCC and to provide for its functions”, it must be noted that the main justification underlying the Administration's decision to put forward the Bill to the LegCo is to enhance public confidence in the present police complaints system (as stated by the Security Bureau in the LegCo Brief SBCR 1/2801/77). Therefore, the ultimate objective for introducing the Bill is to enhance public confidence in the present police complaints system by establishing a statutory IPCC and provide for checks and balances on the police force so as to prevent the police force from abuse of its power. This point has never been denied by the Administration either in any past discussion regarding the police complaint system, or in the Administration's paper in response to the CSA on the Objective of IPCC.</p>

<sup>1</sup> The Administration will move CSAs to change the Chinese full name of IPCC from “投訴警方獨立監察委員會” to “獨立監察警方處理投訴委員會” and, accordingly, its acronym from “警監會” to “監警會”.

<sup>2</sup> The Administration will move CSAs to change the Chinese for “reportable complaint” from “須具報投訴” to “須匯報投訴”.

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	<p>handling and investigating public complaints against members of the police force. IPCC monitors CAPO's investigation of reportable complaints. CSAs (a) to (c) give a new and major investigative power or function to IPCC. These CSAs are clearly outside the scope of the Bill and should not be admissible under Rule 57(4) of RoP.</p> <p>3. CSAs (d) and (e) seek to empower IPCC to interview any person anytime for performing its functions under clause 7(1), presumably with a view to collecting evidence. This is a power inherent in the proposed investigative power for IPCC, in contrast to the present provision of clause 19 which permits IPCC to conduct interviews only for the purpose of considering investigation reports or interim investigation reports on reportable complaints. Thus, these CSAs also fall outside the scope of the Bill and should not be admissible under Rule 57(4) of RoP.</p> <p>4. Indeed, if IPCC is empowered to investigate complaints or as an integral arrangement to interview any person anytime, whether generally or only when it is not satisfied with the Police's investigation findings, it will need to have its own investigation complement. As a point of reference, for the 2008-09 financial year, CAPO as an investigation agent is estimated to incur an expenditure of about \$47.8 million, in contrast to IPCC's financial provision of \$16.5 million as the oversight body. Considerable public expenditure</p>	<p>2. In this context, to state that “the object of the Bill is to incorporate the existing IPCC and to provide for its functions of monitoring CAPO's handling and investigation of reportable complaint” is only a narrow description of the Bill, which covers only the administrative aspect of the Bill, and does not reflect the legislative intent at all.</p> <p>3. It follows that the subject matter and the scope of the Bill is not limited to the narrow description as in the last paragraph but includes all elements that seek to provide for checks and balances on the police force so as to prevent the police force from abuse of its power. This can be done, within the scope of the Bill, through empowering the statutory IPCC and vest it with investigative power, widening of its interviewing and decision-making authority with regards to interviewees, categorization and classification of complaints, etc., in accordance with Rule 57(4) of RoP.</p> <p>4. It should also be noted and must be confirmed that not all proposed amendments which depart from the original provision in the Bill is outside the scope of the Bill. The Administration simply has not explained the reasons for claiming that the CSAs are out of the scope, or it has only pointed out that a certain CSA is “in contrast to the present provision”.</p>



CSAs	Secretary for Security	Members' responses
	<p>will be incurred by IPCC if it were to undertake and to investigate complaints against police officers as CAPO does. As such, CSAs (a) to (e) have a charging effect and should require the written consent of CE in accordance with Rule 57(6) of RoP.</p>	<p>5. The Administration's assessment of the CSAs (a) to (c) that it seeks to “transform the IPCC from a body that monitors the Police's handling of public complaints against members of the police for into one that investigates such complaints” is not precise. The fact that the CSAs confer investigative power on IPCC does not oblige IPCC to investigate all complaints made against the police force. On the contrary, IPCC remains as a monitoring and advisory body over CAPO, but with “reserved” discretionary power to conduct investigations, presumably (considering its budget) only in serious cases or where it is not satisfied with CAPO's manner in collecting evidence or investigating complaints.</p> <p>6. Conferring investigative power on IPCC is to ensure that complaints against the police force are not virtually only investigated by the police force internally. This device serves to prevent the police force from abusing its power. It must also be noted that maintaining a “reserved” power of investigation itself also adds to the strength of IPCC's monitoring function. Thus, for the reasons stated in paragraphs 1 to 4 above CSAs (a) to (c) are made in accordance with Rule 57(4) of the RoP.</p> <p>7. CSAs (d) and (e) seek to empower IPCC to interview any person anytime for performing its functions under clause 7(1)(a), (b), (c) and (d)</p>

CSAs	Secretary for Security	Members' responses
		<p>(wrongly quoted by the Administration as “under clause 7(1)”). This ensures that the power of conducting interviews by IPCC is not restricted to consideration of investigation reports or interim reports. Such amendment definitely relates to prevention of abuse of power by the police force and should be allowed under Rule 57(4) of RoP for reasons stated in paragraphs 1 to 4 above.</p> <p>8. Even if IPCC is vested with power of investigation or as an integral arrangement to interview any person anytime, the CSAs do not oblige IPCC to undertake any act but only stipulates discretionary power. If IPCC decides to conduct investigations or interviews under the CSAs, it must do so under its budget approved by LegCo. Moreover, under the CSAs, the only investigative power conferred on IPCC is the power to summon. Unlike other investigative powers, for instance, the power of entry into premises, the public expenditure incurred in summoning witnesses is only trivial. For these reasons, CSAs (a) to (e) are made in accordance with Rule 57(6) of the RoP.</p>
<p>(f) to amend clause 7(1)(b)</p> <p>(g) to amend clause 11(b)</p>	<p>5. IPCC's function is to monitor the Police's handling and investigation of reportable complaints to ensure that such complaints are dealt with in a fair and impartial manner. Clause 7(1) provides that in exercising this monitoring function, IPCC may make recommendations to CP or CE or both of</p>	<p>9. The Administration's assessment of CSAs (f) to (i) that it is a package to “empower the IPCC to determine the categorization and classification of complaints” is not precise. Similar to the reasons given in the last paragraph, the CSAs do not oblige IPCC to undertake any act (except</p>

CSAs	Secretary for Security	Members' responses
<p>(h) to amend clause 15(3)</p> <p>(i) to amend clause 18</p>	<p>them as it considers appropriate. Clause 25 further provides that where IPCC has made a recommendation under clause 7(1)(a) or (c), it may require the Police to submit to it a report on any action taken or to be taken by the Police in respect of the recommendation. The Bill clearly spells out the monitoring and advisory nature of IPCC. Indeed, it does not contain any provision which empowers IPCC to determine matters on the categorization or classifications of complaints. CSAs (f) to (i) seek to empower IPCC to determine such matters which, in effect, will commit CAPO or public resources on whatever cases IPCC were to determine as “reportable”. Whilst there is indirect charging effect, the Administration's submission is premised upon the principle that these CSAs fall outside the scope of the Bill and should not be admissible under Rule 57(4) of RoP.</p>	<p>deciding whether or not the investigation report submitted by CP may be endorsed, which requires virtually no additional public expenditure) but only stipulate discretionary power which serves as a “reserved power” of IPCC to have control over the categorization and classification in cases where the views of IPCC and CP do not agree. According to the Security Bureau, the number of cases of this kind is remarkably low. Thus, the possible charging effect is trivial and indirect. Accordingly, CSAs (f) to (i) are made in accordance with Rule 57(6) of RoP.</p> <p>10. The Administration has not provided any reason to support its argument that CSAs (f) to (i) are outside of the scope of the Bill. The Administration's views do no more than stating that these CSAs have departed from the original design of the procedures in determining categorization and classification. For the reasons given in paragraphs 1 to 4 above, these CSAs are made in accordance with Rule 57(4) of the RoP.</p>
<p>(j) to amend the long title (<i>third CSA</i>)</p> <p>(k) to amend clause 9(a)</p>	<p>6. The Bill seeks to codify IPCC's existing functions in monitoring the Police's handling and investigation of reportable complaints. This is clearly stipulated in the long title of the Bill. The</p>	<p>11. The Administration's assessment of CSAs (j) to (n) has correctly pointed out that they seek to expand the scope of complaints that could be investigated and reviewed by IPCC. This is a</p>

CSAs	Secretary for Security	Members' responses
<p>(l) to amend clause 10(c)</p> <p>(m) to delete clause 10(d)</p> <p>(n) to amend clause 20(1) (a)</p>	<p>scope of reportable complaints is defined in clause 10. The scope of non-reportable complaints<sup>3</sup> (the categorization, but not investigation, of which is monitored by IPCC) is defined in clause 13. Clause 9 further identifies complaints that are neither reportable complaints nor non-reportable complaints, and are thus not subject to IPCC's monitoring.</p> <p>7. CSAs (j) to (n) seek to substantially expand the scope of complaints that could be investigated and reviewed by IPCC to cover all complaints made against members of the police force, including:</p> <p>(A) complaints which are currently excluded from IPCC's purview, such as staff complaints within the Force relating to police conduct (CSA (k));</p> <p>(B) complaints not made by directly affected complainants nor covered by clause 14 (CSA (l); and</p> <p>(C) anonymous complaints (CSA (m)).</p> <p>8. CSA (n) empowers IPCC to require CP to provide any information or material relating to a complaint made to CP (instead of relating to a reportable complaint). These CSAs fall outside the scope of the Bill and should not be admissible under Rule</p>	<p>significant measure aiming to prevent abuse of power by members of the police force. The examples given by the Administration (paragraphs 7(A) to (C)) have covered circumstances under which abuse of police power could happen without falling under the scope of complaints that could be investigated and reviewed by IPCC under the original provisions in the Bill. Therefore, for the reasons stated in paragraphs 1 to 4 above, CSAs (j) to (n) are made in accordance with Rule 57(4) of the RoP.</p> <p>12. It is doubtful that using the 309 cases which fall under paragraphs 7(A) to (C) of the Administration's views is scientific in generating the formula that leads to an additional recurrent expenditure of \$5.8 million, as calculated by the Administration. Cases under these paragraphs are usually of different nature from general complaints against the police force in that it requires fewer resources in conducting investigations. For instance, where the complaint is made by a person in his official capacity as a member of the police force regarding police conduct, the interviews and collection of evidence are conducted by CAPO only internally amongst the police force. Also, in cases of anonymous complaints, CP is not required by the Bill to inform the complainant of</p>

<sup>3</sup> The Administration will move CSAs to rename “non-reportable complaint” as “notifiable complaints”.

CSAs	Secretary for Security	Members' responses
	<p>57(4) of RoP.</p> <p>9. If the scope of complaints subject to IPCC's oversight were to be expanded as proposed by CSAs, the Police would incur additional resources for preparing investigation reports for submission to IPCC and responding to IPCC's requirements for additional information, clarification and materials, etc. In 2007, 309 complaints received by CAPO fell under paragraphs 7(A) to (C) above, compared with 2 532 reportable complaints handled by CAPO. For the 2007-2008 financial year, the recurrent expenditure of CAPO was around \$47.8 million. On a pro-rata and broadly indicative basis, it is estimated that CAPO would require an additional recurrent expenditure of \$5.8 million (309/2 532 x \$47.8 million) a year if CAPO were required to conduct investigations and submit reports on the 309 out-of-scope complaints to IPCC assuming that CAPO should adopt the same standard of investigation and reporting required under the Bill. At present, complaints falling outside the monitoring purview of IPCC that are received by police units other than CAPO are handled in accordance with the established mechanism by the appropriate authority within the Force without being first referred to CAPO and certainly do not need to follow the same investigation and reporting arrangements as by CAPO under the Bill. While statistics on these non-CAPO complaints are not readily available, they are large in volume and the organizational set</p>	<p>the results and classification since there is not a complainant at all. These factors seem to be neglected by the Administration in its calculation of additional public money the Police would incur.</p> <p>13. The Administration has raised in its views (paragraph 9) that there are a large volume of non-CAPO complaints (complaints falling outside the existing monitoring purview of IPCC received by police units other than CAPO) that CAPO must handle under the CSAs. However, the Administration fails to identify the nature of those non-CAPO complaints. Those complaints either fall under paragraphs 7(A) to (C) of the Administration's views and are already included in its calculation in paragraph 12 above, or are vexatious or frivolous which do not require investigation by CAPO under clause 10(b) of the Bill. Hence, the Member is not convinced that CSAs (<i>j</i>) to (<i>n</i>) are likely to have a substantial charging effect under Rule 57(6) of RoP.</p>

CSAs	Secretary for Security	Members' responses
	<p>up of CAPO would have to be expanded many folds if it were to prepare investigation reports and address enquiries from IPCC on all such complaints. The CSAs, therefore, have a charging effect and require the written consent of the CE in accordance with Rule 57(6) of RoP</p>	
<p>(o) to amend clause 8(1)</p> <p>(p) to amend clause 17(1)(a)</p> <p>(q) to amend clause 17(1)(b)</p> <p>(r) to amend clause 17(2)(a)</p> <p>(s) to amend clause 17(2)(b)</p> <p>(t) to amend clause 17(3)(b)</p> <p>(u) to amend section 11 of Schedule 1</p>	<p>10. CSAs (o) to (u) empower IPCC to determine the intervals at which CAPO should submit lists of reportable complaints and notifiable complaints to IPCC, to determine whether a belated complaint is of a serious nature<sup>4</sup>, and to require CAPO to submit interim investigation reports on reportable complaints if the investigation is not completed within 4 months (instead of 6 months as proposed in the Bill) or such shorter period as IPCC may decide. CSA (u) mandates IPCC to determine at meetings, instead of allowing IPCC the discretion to deal with the matters by circulation of papers, matters relating to complaints which involve an allegation of criminal offences committed, assault, fabrication of evidence, threat or abusive or illegal exercise of police powers by members of the police force. All these CSAs will generate additional workload for CAPO and IPCC (as the case may be). As a consequence, additional recurrent subvention, though difficult to be quantified with precision, would need to be provided to CAPO and IPCC. These CSAs, therefore, have a charging effect and require the written consent of the CE in accordance</p>	<p>14. It is doubtful that conferring a decision-making authority on IPCC in determining whether a belated complaint is of a serious nature will have any charging effect as stated in the Administration's views (paragraph 10) unless there are solid grounds indicating that complaints of that kind are in large volume.</p> <p>15. In the Bill's Committee, the Administration has given the figure that 94% of the investigations of complaints are, in fact, completed within four months. Then, it is difficult to understand the Administration's view that the CSAs requiring CAPO to submit interim investigation reports on reportable complaints if the investigation is not completed within four months have any charging effect at all to either CAPO or IPCC.</p> <p>16. Under CSA (u), serious cases, such as those involving an allegation of criminal offences committed, assault, fabrication of evidence, threat or abusive or illegal exercise of police powers must be decided at a meeting instead of</p>

<sup>4</sup> It should be CSA (g) which empowers IPCC to determine whether a belated complaint is of a serious nature

CSAs	Secretary for Security	Members' responses
	with Rule 57(6) of RoP.	determining a matter by circulation of papers. It must be noted that this CSA does not prevent information or materials of those cases from circulating among members of IPCC. Studying of the cases can be done by circulation of information or materials. Only determination of matters must be completed in a meeting. This arrangement will not cause a charging effect under Rule 57(6) of RoP.
<p>(v) to add paragraph (g) to clause 7(1)</p> <p>(w) to amend clause 26</p>	<p>11. CSA (v) vests an additional function in IPCC to promote public awareness of monitoring the Police. CSA (w) empowers IPCC to require CAPO to consult IPCC on new or significant amendments to police orders or manuals not relating to the handling or investigation of reportable complaints. These new functions clearly go beyond the legislative intent of maintaining IPCC as an independent body to monitor CAPO's handling and investigation of reportable complaints made against individual police officers only.</p> <p>12. IPCC would require additional resources for the effective discharge of these new functions. Although there is practical difficulty in giving a precise estimate of the additional resource requirement, it is beyond argument that the CSAs have a charging effect and require the written consent of the CE in accordance with Rule 57(6) of RoP.</p>	<p>17. As explained in paragraphs 1 to 4 above, the legislative intent underlying the Bill is to enhance public confidence in the present police complaints system by establishing a statutory IPCC and provide for checks and balances on the police force so as to prevent the police force from abuse of its power. CSAs (v) and (w) clearly remain within such legislative intent and in accordance with Rule 57(4) of RoP. It must be noted that CSA (v) is very similar to subclause 7(1)(e) of the Bill, to which the Administration has not raised any objection regarding its compatibility with the legislative intent of the Bill.</p> <p>18. The Administration has not explained at all the means through which a charging effect is caused under CSAs (v) and (w). The Administration's views in paragraph 12 do no more than stating that the CSAs involve new functions of IPCC. It is practically difficult to envisage any charging effect involved in requiring the CAPO</p>

CSAs	Secretary for Security	Members' responses
		to consult IPCC on new or significant amendments to police orders or manuals not relating to the handling or investigation of reportable complaints.
(x) to add subclause (3) to clause 7	13. The all embracing CSA (x) requiring CP to do all such things that are reasonably necessary, etc. will significantly increase the workload of CAPO and additional resources will need to be provided to CAPO in relief. While it is difficult to quantify the amount of additional resources involved in view of the very extensive scope proposed for IPCC's functions and powers, it is expected that it will be very substantial. The CSA, therefore, has a charging effect and requires the written consent of CE in accordance with Rule 57(6) of RoP.	19. Similar to the “reserved” power of investigation and of determining the classification and categorization of complaints under the Member's CSAs (as explained in paragraph 5 and 9 above), the CSA that IPCC may require CP to do all such things that are reasonably necessary to assist IPCC in performing IPCC's functions is a “reserved” power to be exercised by IPCC, presumably only in exceptional cases where it comes to actual difficulty in performing its function under the Bill. Supposedly, this power is IPCC's last resort and will not cause substantial charging effect under Rule 57(6) of RoP.
(y) to amend clause 44 and renumber it as clause 44(1)  (z) to add subclause (2) to clause 44	14. Section 7(1)(b) of The Ombudsman Ordinance (that Ordinance) stipulates that The Ombudsman may investigate any action taken by or on behalf of an organization set out in Part II of Schedule 1 in the exercise of its administrative functions in relation to the Code on Access to Information published by the Government. The Code on Access to Information serves as a framework governing the provision of information to members of the public by Government departments, defined to include any department, bureau, force, service, unit, secretariat, or other agency of the Government,	20. The fact that clause 44 exists in the Bill explains itself that whether the statutory IPCC should fall under the ambit of The Ombudsman is an issue relating to the subject of the Bill. If it is unrelated to the subject of the Bill and therefore outside the context of the Bill, clause 44 would not have been included in the Bill in the first place. Thus, it is clear that CSAs (y) to (z) are in accordance with Rule 57(4) of RoP.  21. The inconsistency will be reconciled after making technical changes.



CSAs	Secretary for Security	Members' responses
	<p>however styled. Indeed, the present scope of Part II of Schedule 1 to that Ordinance covers only government agencies, including civil servants now serving IPCC Secretariat in its capacity as a Government department. 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 IPCC Secretariat. It is thus inappropriate for the Government to mandate the application of the Code on Access to Information 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, similar to the arrangement for other incorporated bodies. A consequential amendment has, therefore, been included under clause 44 of the Bill to remove IPCC Secretariat from Part II of Schedule 1 to that Ordinance.</p> <p>15. Clause 44 reflects the establishment of IPCC as a statutory body, and as a corollary the cessation of IPCC Secretariat as a Government department. The Bill will make no change to the status of IPCC under that Ordinance, as the Council itself is not covered by that Ordinance now. 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, issues concerning the ambit of The Ombudsman are outside the context of the Bill and thus, CSAs (y) and (z) should not be admissible under Rule 57(4) of RoP.</p>	

CSAs	Secretary for Security	Members' responses
	<p>16. Rule 57(4)(e) of RoP provides that “an amendment which creates a conflict or discrepancy between the text in one language and the text in the other may not be moved.” CSA (z) is not consistent between the two languages, in that the English version seeks to add IPCC into Part I of Schedule 1 to that Ordinance, while the Chinese version seeks to add IPCC Secretariat into the same Part. It should not, therefore, be admissible under Rule 57(4)(e) of RoP.</p>	
<p>(aa) To add a new clause 26A</p>	<p>17. As the CSA is not consistent between the two languages, it should not be admissible under Rule 57(4)(e) of RoP.</p>	<p>22. The inconsistency will be reconciled after making technical changes.</p>
<p><b>(2) Hon LEE Wing-tat</b></p>		
<p>(ab) to amend the long title</p>	<p>18. The CSA seeks to expand the scope of police complaints that are subject to IPCC's monitoring, in like manner as Hon James TO's CSAs (j) to (n). For the same reasons as set out above for these CSAs of Hon James TO, the CSA falls outside the scope of the Bill and should not be admissible under Rule 57(4) of RoP. It also has a charging effect and requires the written consent of CE in accordance with Rule 57(6) of RoP.</p>	<p>Mr LEE has indicated that he shares the same views with Hon James TO.</p>
<p>(ac) to amend clause 7(1)(a)</p>	<p>19. CSAs (ac) to (ae) seek to confer an investigative power on IPCC, similar to Hon James TO's CSAs (a) to (c). As the CSAs give a new and major investigative power or function to IPCC, the CSAs</p>	<p>Mr LEE has indicated that he shares the same views with Hon James TO.</p>

<b>CSAs</b>	<b>Secretary for Security</b>	<b>Members' responses</b>
<p>(ad) to add subclause (b) to clause 7(1)</p> <p>(ae) to add new clauses 7A to 7D</p>	<p>fall outside the scope of the Bill and should not be admissible under Rule 57(4) of RoP. As explained above (paragraph 9), the CSAs also have a charging effect and require the written consent of CE in accordance with Rule 57(6) of RoP.</p>	

Abbreviations

Bill, <i>the</i>	Independent Police Complaints Council Bill
CAPO	Complaints Against Police Office
CE	Chief Executive
CP	Commissioner of Police
CSAs	Committee stage amendments
IPCC	Independent Police Complaints Council
LegCo	Legislative Council
RoP	Rules of Procedure