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Paper for the House Committee meeting on 17 April 2009

**Report of the Subcommittee on Independent Police Complaints Council
Ordinance (Commencement) (No.2) Notice 2009**

Purpose

This paper reports on the deliberations of the Subcommittee on Independent Police Complaints Council Ordinance (Commencement) (No. 2) Notice 2009 (L.N. 36 of 2009) (the No. 2 Commencement Notice).

Background

2. The Independent Police Complaints Council Ordinance (the Ordinance) was passed on 9 July 2008. The Ordinance establishes the Independent Police Complaints Council (IPCC) as a statutory body and provides a legal basis for IPCC to discharge its functions of monitoring and reviewing investigations by the Complaints Against Police Office (CAPO) of the Hong Kong Police Force.

3. Section 2 of the Ordinance provides that the statutory IPCC shall come into operation on a day to be appointed by the Secretary for Security by notice published in the Gazette.

4. By the Independent Police Complaints Council Ordinance (Commencement) Notice (L.N. 6 of 2009) (the Commencement Notice), the Secretary for Security appointed 1 April 2009 as the day on which the Ordinance was to come into operation. The Subcommittee on Independent Police Complaints Council Ordinance (Commencement) Notice (the former Subcommittee) was formed to study the Commencement Notice. In response to the former Subcommittee's suggestion that the commencement of the Ordinance be deferred so as to allow time for Members to obtain more information about the financial resources to be made available to the statutory IPCC, the Administration repealed the Commencement Notice on 27 February 2009 by the Independent Police Complaints Council Ordinance (Commencement) Notice (Repeal) Notice (L.N. 30 of 2009).

The No. 2 Commencement Notice

5. On 13 March 2009, the Administration gazetted the No. 2 Commencement Notice, which stipulates that the Secretary for Security has appointed 1 June 2009 as the day on which the Ordinance shall come into operation. The statutory IPCC would accordingly be established on the same day.

The Subcommittee

6. At the House Committee meeting on 20 March 2009, Members formed a subcommittee to study the No. 2 Commencement Notice (the Subcommittee). The scrutiny period of the No. 2 Commencement Notice has been extended from 15 April 2009 to 6 May 2009 by a resolution of the Legislative Council passed on 1 April 2009. The membership list of the Subcommittee is in the **Appendix**. Under the chairmanship of Hon LAU Kong-wah, the Subcommittee has held two meetings with the Administration, including one meeting with the Chairman of the existing IPCC.

Deliberations of the Subcommittee

Preparations for the establishment of the statutory IPCC

7. According to IPCC, most of the preparatory arrangements for the establishment of the statutory IPCC have been completed and the remaining items will be finalized shortly and, in any event, before the Ordinance commences operation.

8. The Subcommittee notes that in preparation for the establishment of the statutory IPCC, IPCC has taken steps to put in place the necessary arrangements including updating of the relevant procedures and guidelines to reflect the provisions in the Ordinance and the new status of its Secretariat, which will cease to be a government department upon the establishment of the statutory IPCC. Members have noted IPCC's Rules on Proceedings of Meetings. Regarding IPCC's rule on the release of information, Hon Emily LAU has suggested that more information concerning IPCC members, such as their political affiliation, should be released. She has also suggested that arrangements should be made by IPCC to facilitate the observation of IPCC's meetings by members of the public and the press.

9. The Subcommittee has also noted the salient features of the key changes to the existing procedures and guidelines of CAPO. It notes that CAPO has updated its internal procedures and guidelines regarding the handling and investigation of reportable complaints and notifiable complaints to bring them in line with the requirements under the Ordinance and to dovetail with the updated procedures of IPCC, and is consulting IPCC thereon.

Financial and staffing arrangements for the statutory IPCC

Staffing arrangements for the statutory IPCC

10. The IPCC Secretariat is currently staffed by civil servants and a small number of contract officers. The Ordinance empowers the statutory IPCC to appoint its own staff. IPCC has advised that, in order to allow a smooth transition, it will phase out the civil servants currently working in its Secretariat in stages at a rate of six to eight staff per year, with a view to fully replacing all civil servants in the IPCC Secretariat by 31 May 2012. Civil servants who continue to work in the IPCC Secretariat upon the commencement of the Ordinance will do so on a secondment basis. The Administration has advised that it will continue to liaise with IPCC on the programme for phasing out civil servants and provide necessary support.

11. Members have stressed the importance for the statutory IPCC to be provided with sufficient manpower resources to enable it to effectively discharge its functions under the Ordinance. They have requested the Administration to provide a comparison between the Secretariat of the existing IPCC and that of the statutory IPCC in terms of the staffing establishment.

12. IPCC has explained that, as at 31 March 2009, its Secretariat has a total of 25 staff for the performance of required functions and duties of IPCC. This comprises 21 civil servants and four non-civil service contract (NCSC) staff employed to meet on-going service needs, but excludes four NCSC temporary staff for undertaking the one-off preparatory work to facilitate the smooth transition of IPCC into a statutory body. Subject to the approval of the draft estimates for 2009-2010, IPCC will seek to fill three additional senior appointments, namely, the equivalent of two Senior Executive Officer (SEO) posts and another Executive Officer (EO) I post, in the coming year through open recruitment. The statutory IPCC will have a staffing complement of 28 staff.

13. The Subcommittee notes that IPCC had, in its submission to the Bills Committee on IPCC Bill, made known its intent to bid for additional staffing provision of \$10.2 million a year for the addition of six new positions, namely, two SEO equivalent posts, one EOI equivalent post, one EOII equivalent post, one Personal Secretary (PS) II equivalent post and one Assistant Clerical Officer (ACO) equivalent post. Members note that in the draft estimates for 2009-2010, provision has only been made for the addition of three senior posts, namely a Senior Vetting Officer (equivalent to SEO), one Vetting Officer (equivalent to EOI) and a Senior Manager (Finance & General) (equivalent to SEO) but not the other three posts. They have enquired whether the addition of three posts as opposed to the original six posts requested would pose any difficulties to IPCC in discharging its functions under the Ordinance.

14. IPCC has explained that the three additional posts included in the draft estimates for 2009-2010 are for the establishment of an additional vetting team to enhance the statutory IPCC's ability to speed up the processing of complaint cases and vetting of

CAPO's investigation reports, as well as to oversee finance administration and general support work previously undertaken by government departments. The work of the remaining three posts of one EOII, one PSII and one ACO, which is supportive in nature, will be absorbed within the approved manpower of IPCC.

15. Members have noted that IPCC had, in its submission to the Bills Committee on IPCC Bill, highlighted its suggestion of upgrading the post of Secretary-General to the statutory IPCC from the existing rank of Administrative Officer Grade C (Directorate Pay Scale (DPS) Point 2) to the equivalent of DPS Point 3. Members have enquired whether the suggestion has been adopted.

16. IPCC has advised that from an operational or practical point of view, the incumbent civil service Secretary, pitched at DPS Point 2, will need to stay on for the time being to oversee and ensure the smooth transition of IPCC into an independent statutory entity, recruiting its own Secretariat staff and instituting its separate administration and financial management systems. That being the case, the statutory IPCC will take account of the operational experience upon its inception as a statutory body and formulate its proposal to upgrade the Secretary-General post as appropriate. IPCC stresses that it will keep under review the possible upgrading of the Secretary-General post and other staffing requirements in the light of operational experience. It will bid for additional resources as it considers necessary.

17. The Subcommittee notes that the investigation result of a total of 2 572 reportable complaints were endorsed by IPCC in 2008. Of these, 557 cases were fully investigated. Members have expressed concern about the workload of the Legal Adviser to IPCC.

18. IPCC has explained that its Legal Adviser is responsible for advising IPCC on all matters of a legal nature. He/she attends all meetings of IPCC to provide legal advice on a need basis. Where an investigation report touches upon legal issues, such as where judicial proceedings may be involved or where there are questions about the legality of the exercise of certain power by a police officer, the Legal Adviser will provide advice as necessary. Legal advice on investigation reports is mainly related to cases for which full investigation has been conducted. While the IPCC Secretariat has not kept statistics on the number of cases on which the Legal Adviser has provided advice, IPCC is confident that its Legal Adviser should be able to cope with the existing workload. Besides, some members of IPCC are legal professionals who could offer legal advice when needed.

19. Members have sought information on whether the detailed terms of employment of the statutory IPCC staff would be a matter for the statutory IPCC to decide.

20. IPCC has advised that the detailed terms of employment of staff will be decided by the statutory IPCC. However, the terms of employment of the Secretary-General and the Legal Adviser to the statutory IPCC will have to be approved, as required under

section 6(1) of the Ordinance, by the Chief Executive on the advice of the statutory IPCC.

Financial arrangements for the statutory IPCC

21. Members have noted that IPCC had, in its submission to the Bills Committee on IPCC Bill, suggested that in addition to IPCC's existing provision, a one-off provision of \$3.7 million and additional recurrent provision of \$14.4 million should be provided to cover staff costs arising from the addition of six posts, upgrading of the post of Secretary-General to the statutory IPCC and other expenses such as office rental, office equipment, office renovation, translation services and publicity. Members have requested the Administration to provide a breakdown of the funding requests referred to in the submission from IPCC to the Bills Committee on IPCC Bill, and to advise whether any shortfall in the resources allocated would affect IPCC's performance of functions under the Ordinance.

22. IPCC has explained that the draft estimates for 2009-2010 would only cover three additional posts and no upgrading of the post of Secretary-General. As IPCC has decided to conduct open recruitment instead of engaging headhunting service for the recruitment of the Secretary-General and phase out the civil servants currently working in its Secretariat in stages at a rate of six to eight staff per year, recruitment expenses have been revised from the original bid of \$2.1 million to \$0.07 million. Regarding an amount of \$0.7 million proposed for the annual amortization of its office and other equipment, no provision is given in the draft estimates for 2009-2010, as it is the Government's policy to provide funds for the replacement of identified equipment or system towards the end of its useful life, rather than making annual provisions by instalment and in advance. Indeed, in line with such a policy, \$1.88 million is provided for replacement of the audio-visual equipment and other minor works (which also meets part of an application of \$0.8 million for office renovation).

23. IPCC has also explained that other provisions in the draft estimates for 2009-2010 are approved on the basis of the relevant revised estimates for 2008-2009. These include -

- (a) \$3.2 million (as opposed to the original bid of \$3.5 million) for office rental, computer systems, translation service, etc;
- (b) \$0.2 million (as opposed to the original bid of \$0.6 million) for publicity; and
- (c) \$0.1 million, which is the same as the original bid, for the procurement of accounting software.

24. IPCC has advised that it is confident of being able to discharge its functions under the Ordinance with the resources allocated under the draft estimates for 2009-2010. It notes that in addition to the annual Resource Allocation Exercise (RAE),

it may also consider a mid-year bid for urgent approval of required resources, when necessary. Hon LEUNG Kwok-hung takes the view that the current arrangement for determining the provision for the statutory IPCC is inappropriate. He considers that the provision for IPCC should be set at a certain percentage of the provision for the Hong Kong Police Force.

25. The Administration has stressed that to ensure the discharge of the statutory IPCC's functions of monitoring the Police's handling and investigation of reportable complaints, it is committed to ensuring that the statutory IPCC will continue to be provided with appropriate support and resources. The draft estimate of \$28.3 million for IPCC in 2009-2010 represents an increase of \$11.8 million or 71.5% over the original estimate for 2008-2009. It also represents an increase of \$10.5 million or 59% over the revised estimate for 2008-2009. The additional provision is to enable the statutory IPCC to increase its establishment, employ its own staff upon the phasing out of the seconded civil servants, meet operating expenses which have been funded by other Heads of Expenditure or provided free of charge by government departments before IPCC becomes a statutory body, procure equipment and carry out maintenance works.

26. The Administration has assured the Subcommittee that, as a statutory body, the statutory IPCC will have a high degree of flexibility and independence in managing its own finances. The financial provision for the statutory IPCC will be set out under a separate head of expenditure in the Government's Estimates in the form of a one-line vote with the Secretary-General of the statutory IPCC as the Controlling Officer who will have autonomy to deploy or redeploy resources allocated or savings generated for purposes and functions pertinent to the statutory IPCC subject to the relevant provision of the IPCC Ordinance.

27. The Administration stresses that it will advise the statutory IPCC annually of the time and manner in which the relevant RAE and Estimates of Expenditure are to be conducted/prepared. This will facilitate the statutory IPCC to consider the level of financial provision needed for the subsequent financial year and to prepare resource bids when necessary. Any requests made by the statutory IPCC for additional resources will be subject to the established resource bidding procedures in the normal manner and will be considered at a high-level forum, with the personal participation of both the Chief Secretary for Administration and the Financial Secretary.

28. The Subcommittee has requested the Administration and the IPCC Secretariat to revert to the Panel on Security on the staffing and financial situation of the statutory IPCC one year after the commencement of the Ordinance.

Workflow and workload in connection with the examination of reports from CAPO

29. Noting that IPCC had endorsed the investigation results of a total of 2 572 reportable complaints in 2008, members have enquired about the workflow in connection with the examination of investigation reports from CAPO.

30. IPCC has explained that upon receipt of investigation reports on reportable complaints from CAPO, the IPCC Secretariat will allocate them to a vetting team for scrutiny. The vetting team will help see to it that the investigation is proper and comprehensive, and will seek clarifications from CAPO as necessary. When the IPCC Secretariat is satisfied that a case has been properly investigated and the findings in the report are in order, or in the case of the statutory IPCC, the requirements as stipulated in the Ordinance are met, it will make arrangements to provide the investigation report to IPCC members for examination.

31. Noting that the draft estimates for 2009-2010 would cover only three additional posts and no upgrading of the post of Secretary-General, members have enquired whether the manpower for the statutory IPCC as provided under the draft estimates for 2009-2010 is adequate for the statutory IPCC to fully discharge its function of examination of reports from CAPO.

32. IPCC has advised that it has an internal system for sharing out workload among IPCC members and for the investigation reports to be distributed evenly for consideration among three sub-groups. Each sub-group comprises a Vice-Chairman and four to five members. After a report has been considered and accepted by a sub-group, it will be examined further by the IPCC Chairman for formal endorsement under delegated authority and on behalf of IPCC. During the process, any IPCC member can raise the suggestion for a report to be referred to IPCC, which must so consider the case as proposed.

33. IPCC has informed the Subcommittee that with the addition of one Senior Vetting Officer and one Vetting Officer as referred to in paragraph 13 above, an additional vetting team will be established to enhance the statutory IPCC's ability to speed up the processing of complaint cases and vetting of CAPO's investigation reports. IPCC has already been able to meet its performance pledge in respect of the vetting of investigation reports with three vetting teams. The additional resources allocated should enable the statutory IPCC to better perform its vetting work with four teams.

Observers Scheme

34. The Subcommittee has noted that under the Observers Scheme, IPCC members and observers can observe, with or without appointment, the interviews and collection of evidence conducted by CAPO in respect of a reportable complaint. Members note that IPCC has requested CAPO to give the IPCC Secretariat at least 48 hours' advance notice of any scheduled interviews with complainants, complainees and witnesses as well as collection of evidence. IPCC hopes that CAPO can record all such interviews and collection of evidence by video. Members have requested IPCC members and observers to conduct more surprise observations without alerting CAPO in advance.

35. IPCC has explained that there are sometimes practical difficulties in conducting a surprise observation without alerting the complaint investigator/conciliating officer in

advance, such as the need for arranging parking in advance and the need for an observer to arrive half an hour earlier to study background information, which is voluminous and thus could not be provided to an observer in advance, on a case. IPCC stresses that improvement has been and would continue to be made to the Observers Scheme. For example, consideration is being given by IPCC to requesting all observers to spare themselves one or two whole days free for attending observations each year.

36. The Police has advised that there are sometimes difficulties in notifying the IPCC Secretariat of an interview or collection of evidence more than 48 hours in advance, such as in the case of interview of a person held in custody by the Correctional Services Department or when there is an urgent need to search the belongings of a police officer who is the subject of a complaint. As regards the video recording of all interviews, the Police notes that the consent of the person being interviewed is required.

37. The Subcommittee considers that arrangements should be made by the Police and the IPCC Secretariat to facilitate the conduct of surprise observations without alerting CAPO, or at least the complaint investigator/conciliating officer, in advance. The Subcommittee has requested the Police and the IPCC Secretariat to jointly consider improving the arrangements and revert to the Panel on Security one year after the commencement of the Ordinance.

Review on the implementation of the Ordinance

38. Members have asked whether IPCC has drawn up any timetable for a review of the implementation of the Ordinance.

39. IPCC has advised that it will conduct a review on its manpower situation and implementation of the Ordinance six months after the commencement of the Ordinance. It has also commissioned an opinion survey on public understanding and expectation of IPCC before and it starts operation as a statutory body.

Follow-up actions by the Administration and the IPCC Secretariat

40. The Subcommittee has requested the Administration and the IPCC Secretariat to revert to the Panel on Security one year after the commencement of the Ordinance on -

- (a) the staffing and financial situation of the statutory IPCC (paragraph 28 refers); and
- (b) the improved administrative arrangements for surprise observations conducted by IPCC members and observers (paragraph 37 refers).

Advice Sought

41. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 2
Legislative Council Secretariat
16 April 2009

**Subcommittee on
Independent Police Complaints Council Ordinance
(Commencement) (No. 2) Notice 2009**

Membership list

Chairman	Hon LAU Kong-wah, JP
Members	Hon James TO Kun-sun Dr Hon Philip WONG Yu-hong, GBS Hon WONG Yung-kan, SBS, JP Hon Miriam LAU Kin-yea, GBS, JP Hon Emily LAU Wai-hing, JP Hon Abraham SHEK Lai-him, SBS, JP Hon Vincent FANG Kang, SBS, JP Hon Andrew LEUNG Kwan-yuen, SBS, JP Hon Alan LEONG Kah-kit, SC Hon LEUNG Kwok-hung Hon WONG Ting-kwong, BBS Hon Cyd HO Sau-lan Hon WONG Kwok-kin, BBS Hon IP Kwok-him, GBS, JP

(Total : 15 Members)

Clerk	Mr Raymond LAM
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Legal Adviser	Mr LEE Yu-sung
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Date	27 March 2009
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