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**Subcommittee on
Independent Police Complaints Council Ordinance (Commencement) Notice**

Background brief prepared by the Legislative Council Secretariat

Purpose

This paper summarizes past discussions by the Bills Committee on Independent Police Complaints Council (IPCC) Bill (the Bills Committee) on the commencement of the IPCC Ordinance.

Background

2. Enacted at the Council meeting on 9 July 2008, the IPCC Ordinance codifies the existing Police complaints system and turns IPCC into a statutory body. It sets out the IPCC's functions, powers and operation under the Police complaints system. The IPCC Ordinance also stipulates the statutory responsibilities of the Police to comply with the requirements of IPCC.

3. The main functions of IPCC as provided for under the IPCC Ordinance include -

- (a) to observe, monitor and review the handling and investigation of reportable complaints by the Police and to make recommendations in respect of the handling or investigation of such complaints;
- (b) to monitor actions taken or to be taken in respect of a member of the Police Force by the Commissioner of Police in connection with any reportable complaint and to provide its opinion on such actions; and
- (c) to identify any faults or deficiencies in the practices or procedures adopted by the Police that have led to or may lead to reportable complaints and to make recommendations in this regard.

4. The IPCC Ordinance provides IPCC with a wide range of powers for discharging its functions, including the power -

- (a) to require the Police to provide information or materials relating to reportable complaints and clarify the facts, discrepancies or findings;
- (b) to require the Police to investigate or re-investigate reportable complaints;
- (c) to conduct interviews for the purpose of considering Police investigation reports on reportable complaints;
- (d) to require the Police to provide explanations in relation to any actions taken or to be taken in respect of a member of the Police Force in connection with reportable complaints;
- (e) to require the Police to submit to the IPCC reports on any actions taken or to be taken by the Police in respect of the IPCC's recommendations; and
- (f) to require the Police to consult IPCC on any proposed new or significant amendments to Police orders or manuals relating to the handling or investigation of reportable complaints.

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

6. Section 45 of the IPCC Ordinance provides that -

- (a) a person who, immediately before the commencement date, holds an appointment as the Chairman, Vice-Chairman, any other member of the former IPCC or is a former observer, continues to be, as from that date, the Chairman, Vice-Chairman, such other member of IPCC or an observer (as the case may be) as if he were appointed under the Ordinance;
- (b) a person who, immediately before the commencement date, is the Secretary or Legal Adviser of the former IPCC continues to be, as from that date until the Secretary-General or the Legal Adviser (as the case may be) has been appointed, the Secretary-General or the Legal Adviser of IPCC on the same terms and conditions as those applicable to that person immediately before that date; and
- (c) a person who, immediately before the commencement date, is an officer (other than the Secretary and the Legal Adviser) of the former IPCC continues to be, as from that date until such time as IPCC and the Government may agree, such officer of IPCC on the same terms and

conditions as those applicable to that person immediately before that date.

7. On 9 January 2009, the Administration gazetted the IPCC Ordinance (Commencement) Notice and announced that S for S had appointed 1 April 2009 as the commencement date for the IPCC Ordinance, and the statutory IPCC would be established on the same day.

Deliberations of the Bills Committee

8. In the course of deliberations on the IPCC Bill, the Bills Committee had discussed, among other things, the establishment of and the financial provision for the statutory IPCC. It noted IPCC's view that before the IPCC Ordinance was brought into operation, it was important for the transitional arrangements to be clearly settled with the Administration.

9. In its submission to the Bills Committee, IPCC highlighted its recommendations on the staffing and financial provision for the statutory IPCC as follows -

- (a) six new posts should be added to the IPCC Secretariat;
- (b) the Secretary to the statutory IPCC, which was to be retitled as Secretary-General to the statutory IPCC, should be upgraded from the existing rank of Administrative Officer Grade C (Directorate Pay Scale Point 2) to the equivalent of Directorate Pay Scale Point 3;
- (c) 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;
- (d) detailed terms of employment of IPCC staff should be a matter for the statutory IPCC to decide;
- (e) 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; and
- (f) additional funding should be provided to cover any rental increase for office accommodation, and other unforeseen expenses.

10. Members of the Bills Committee took the view that the statutory IPCC should be provided with sufficient resources to enable it to effectively discharge its functions

under the Bill. Some members expressed reservations about whether the Bill should be enacted without the Administration's firm commitment to provide the statutory IPCC with the required additional resources. Some members took the view that the financial arrangements should be resolved before the enactment of the Bill.

11. The Administration responded that the financial provision for IPCC was 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 was that Head 121 should be retained to set out all money paid by the Government to the statutory IPCC and appropriated for that purpose by the Legislative Council. The financial allocation to the statutory IPCC would be in the form of a one-line vote with the Secretary to IPCC continuing to be the Controlling Officer. These arrangements were modelled on those applicable to the management of the finances of the Office of the Ombudsman.

12. The Administration advised that, to facilitate IPCC to discharge its functions of monitoring the handling and investigation of reportable complaints by the Complaints Against Police Office, it was committed to ensuring that the statutory IPCC would continue to be provided with appropriate support and resources under the new regime. The Administration envisaged that IPCC would be provided with no less than the current level of financial resources on becoming a statutory body. Any requests for additional resources would be subject to the established resource bidding procedures in the normal manner. In this regard, the Administration would advise the statutory IPCC annually of the time and manner in which the relevant resource allocation exercises and estimates of expenditure were 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.

13. The Administration also advised that bids for additional financial resources from all government bureaux/departments and government-funded bodies, including those from the statutory IPCC in future, would 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 might attend such a forum to appeal against any decisions on their bids for resources. In the event that the statutory IPCC wished to lodge such an appeal, S for S as the point of contact between the statutory IPCC and the Administration, would invite the Secretary-General to the statutory IPCC (being the Controlling Officer for the IPCC's head of expenditure) to present his case personally.

14. Regarding staffing arrangements, the Administration advised that government-funded bodies, including the statutory IPCC, were required to observe the Administration's prevailing subvention guidelines when determining their staffing structure, appointing staff and drawing up the employment terms and conditions of their staff. Specifically, the statutory IPCC was required to regularly review the number, ranking and remuneration packages of its staff at the top three tiers. In assessing the appropriateness of the number and ranking of senior positions of the

statutory IPCC, the functions and the overall staffing structure of IPCC, the nature and complexity of the duties concerned, and the ranking for comparable jobs in the civil service would be taken into account. In the absence of comparable civil service ranks, reference should be made to market practices. The Administration envisaged that when a proper framework governing the remuneration practices for the top three tier executive was drawn up, it would filter down to other tiers of staff.

Relevant papers

15. Members may wish to refer to the following papers for further details -
- (a) Submission dated 6 December 2007 from IPCC to the Bills Committee [LC Paper No. CB(2)563/07-08(01)];
 - (b) Administration's response to the issues raised by IPCC in its submission of 6 December 2007 [LC Paper No. CB(2)829/07-08(01)];
 - (c) Administration's response to issues raised by IPCC in its submission of March 2008 [LC Paper No. CB(2)1689/07-08(01)];
 - (d) Submission dated 16 May 2008 from IPCC to the Bills Committee [LC Paper No. CB(2)1981/07-08(01)];
 - (e) Administration's paper on financial and transitional arrangements for the statutory IPCC [LC Paper No. CB(2)2360/07-08(01)]; and
 - (f) Report of the Bills Committee for the House Committee meeting on 27 June 2008 [LC Paper No. CB(2)2411/07-08].
16. The above papers are also available on the website of the Legislative Council (<http://www.legco.gov.hk>).