

立法會
Legislative Council

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

Background brief prepared by the Legislative Council Secretariat

Purpose

This paper provides background information relating to the proposed commencement of the Independent Police Complaints Council (IPCC) Ordinance.

Background

2. The IPCC Ordinance was passed on 9 July 2008. The Ordinance establishes 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. 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 CAPO, 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.

Deliberations of the Bills Committee on Independent Police Complaints Council (IPCC) Bill

7. 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.

8. 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, 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), a 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.

9. 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.

10. 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.

11. The Administration advised that, to facilitate IPCC to discharge its functions of monitoring the handling and investigation of reportable complaints by CAPO, 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.

12. 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.

13. 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.

Independent Police Complaints Council Ordinance (Commencement) Notice

14. On 9 January 2009, the Administration gazetted the IPCC Ordinance (Commencement) Notice (the Commencement Notice) and announced that S for S had 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 Subcommittee) was formed to study the Commencement Notice.

Deliberations of the Subcommittee on Independent Police Complaints Council Ordinance (Commencement) Notice

15. During the deliberations of the Subcommittee, members stressed the importance for the statutory IPCC to be provided with sufficient resources to enable it to effectively discharge its functions under the Ordinance. Members noted that the deadline for giving notice to amend the Commencement Notice was 25 February 2009. Some members pointed out that pending the publication of the Draft Estimates of Expenditure 2009-2010 on 25 February 2009 and the special Finance Committee meeting to be held on 24 March 2009 at which Members would examine the Draft Estimates of Expenditure 2009-2010 for the departments and agencies under the Security Bureau, members were not in a position to support the Commencement Notice. Members requested the Administration to consider deferring the commencement of operation of the statutory IPCC by a month or two so as to allow members to obtain sufficient information about the financial resources of the statutory IPCC.

16. The Subcommittee also examined the preparatory work for the establishment of the statutory IPCC. At the request of members, the Administration had provided supplementary information on the progress of preparation for the establishment of the statutory IPCC and the updated procedures and guidelines made by IPCC. It had also provided to the Subcommittee the salient features of the key changes to the existing procedures and guidelines of CAPO. Some members took the view that the meeting procedures of the statutory IPCC had room for further improvement.

17. In response to the Subcommittee's request, the Administration proposed to defer the commencement of the Ordinance to 1 June 2009 to allow more time for Members to examine the resources allocated to the future statutory IPCC. The Subcommittee supported the Administration's proposal. Members of the Subcommittee noted that the Administration would repeal the Commencement Notice and publish a new commencement notice in the Gazette in due course to give effect to the implementation of the IPCC Ordinance on 1 June 2009. Members agreed that the preparatory arrangements and the relevant procedures and guidelines of IPCC and

CAPO should be followed up by the subcommittee on the future commencement notice, if formed.

18. Members may wish to refer to the report of the Subcommittee in the **Appendix** for further details of the deliberations of the Subcommittee.

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

19. The Administration repealed the Commencement Notice on 27 February 2009 by the Independent Police Complaints Council Ordinance (Commencement) Notice (Repeal) Notice, and issued the Independent Police Complaints Council Ordinance (Commencement) (No. 2) Notice 2009 on 13 March 2009 to appoint 1 June 2009 as the new commencement date for the IPCC Ordinance. A special Finance Committee meeting to examine the Draft Estimates of Expenditure 2009-2010 for the departments and agencies of the Security Bureau, including IPCC, was held on 24 March 2009.

Council Business Division 2
Legislative Council Secretariat
26 March 2009

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Paper for the House Committee meeting on 27 February 2009

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

Purpose

This paper reports on the deliberations of the Subcommittee on Independent Police Complaints Council (Commencement) Notice (the Commencement Notice).

Background

2. The Independent Police Complaints Council (IPCC) Ordinance (the Ordinance) was passed on 9 July 2008. The Ordinance establishes 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.

The Commencement Notice

4. On 9 January 2009, the Administration gazetted the Commencement Notice, which stipulated that the Secretary for Security had appointed 1 April 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

5. At the House Committee meeting on 23 January 2009, Members formed a subcommittee to study the Commencement Notice. 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.

Deliberations of the Subcommittee

Continuity of appointments to and operation of the statutory IPCC

6. The Administration has advised that section 45 of the Ordinance provides for the continued appointment of the Chairman, Vice-Chairmen and other members, observers as well as the employees of the existing IPCC upon the establishment of the statutory IPCC. In addition, to ensure that the day-to-day operation of the existing IPCC will continue without disruption upon the commencement of the Ordinance, section 43 of the Ordinance provides for the continuance of things done by the existing IPCC and the continued validity of anything done by, in relation to or on behalf of the existing IPCC.

Staffing and financial arrangements for the statutory IPCC

7. 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. The Administration has advised that in order to allow a smooth transition, it is IPCC's intention to phase out the civil servants currently working in its Secretariat in stages with a view to fully replacing all civil servants in the Secretariat by 31 March 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 will continue to liaise with IPCC on the phasing out programme and provide necessary support.

8. Members have stressed the importance for the statutory IPCC to be provided with sufficient resources to enable it to effectively discharge its functions under the Ordinance. Hon James TO finds it unacceptable that the request for the Administration to commit to providing the statutory IPCC with the required staffing and financial resources, as recommended by IPCC in its submission to the Bills Committee on the IPCC Bill, has not been adequately addressed in the submission by the Administration. He indicates that unless the Administration provides the necessary financial information, he will not support the Commencement Notice.

9. Members note that the deadline for giving notice to amend the Commencement Notice is 25 February 2009. Some members including Hon James TO, Hon Emily LAU, Hon Alan LEONG, Hon LEUNG Kwok-hung and Hon Cyd HO have pointed out that pending the publication of the Draft Estimates of Expenditure 2009-2010 on 25 February 2009 and the special Finance Committee meeting to be held on 24 March 2009 at which Members will examine the Draft Estimates of Expenditure 2009-2010

for the departments and agencies under Security Bureau, members are not in a position to support the Commencement Notice.

10. The Administration has assured members that, to facilitate the statutory IPCC to discharge its 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. As a statutory body, 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 IPCC as the Controlling Officer who will have full autonomy to deploy or redeploy resources allocated or savings generated for purposes and functions pertinent to the statutory IPCC.

11. The Administration stresses that it will advise the statutory IPCC annually of the time and manner in which the relevant Resource Allocation Exercises and Estimates of Expenditure are to be conducted/prepared. 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.

12. Members remain unconvinced of the Administration's assurance and have enquired about the additional resources requested by IPCC for the operation of the statutory IPCC. The IPCC Secretariat has advised that in addition to IPCC's existing provision under Head 121 (i.e. \$16,526,000), it has indicated during the Bills Committee discussion on the IPCC Bill that one-off provision of \$3,700,000 and additional recurrent provision of \$14,400,000 should be provided. Pending the publication of the Draft Estimates of Expenditure 2009-2010 on 25 February 2009, it is not in a position to provide information on the amount of funding allocation to the statutory IPCC in 2009-2010. The IPCC Secretariat, however, will ensure that it will deploy its resources in an optimal manner in support of the statutory IPCC's effective discharge of its functions under the Ordinance.

13. Some members including Hon James TO, Hon Emily LAU, Hon Alan LEONG, Hon LEUNG Kwok-hung, Hon Cyd HO and Hon IP Kwok-him take the view that there is no urgency for the statutory IPCC to commence operation on 1 April 2009, given that the existing IPCC will continue to function. In view of this, they have invited the Administration to consider deferring the commencement of operation of the statutory IPCC by a month or two so as to allow members to obtain sufficient information about the financial resources of the statutory IPCC. Hon James TO has indicated that he will move a motion to repeal the Commencement Notice if the Administration declines to do so.

14. The Administration has explained that the Government and the IPCC Secretariat have worked towards the target of bringing the statutory IPCC into operation on 1 April 2009 because the sooner the statutory IPCC commences operation, the earlier the community can enjoy the benefits brought about by the Ordinance. Nevertheless, taking account of the views expressed by members, the Administration agrees to defer the commencement of the Ordinance to 1 June 2009. The Administration will repeal the Commencement Notice by publishing a notice in the Gazette in the first instance, and will separately publish a new commencement notice in the Gazette, with a view to concluding the negative vetting period in early May 2009.

Preparation for the establishment of the statutory IPCC

15. Compared to the existing administrative arrangements, the IPCC Ordinance provides for, among others, the statutory IPCC's functions in monitoring the handling and investigation of reportable complaints by the Police and related operational procedures. Schedule 1 to the Ordinance further provides for matters related to the internal administration of the statutory IPCC, such as the proceedings of IPCC meetings. The Administration has advised 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. On the other hand, CAPO has also 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.

16. Some members including Hon James TO, Hon Emily LAU, Hon Cyd HO, Hon Alan LEONG and Hon LEUNG Kwok-hung have expressed concern about the progress of the preparatory work for the establishment of the statutory IPCC. They consider that the updated procedures and guidelines of the statutory IPCC and CAPO should be examined by members to ensure that IPCC will discharge its function properly. The Chairman holds the view that as an independent body, the statutory IPCC should have the prerogative to determine its own procedures and guidelines.

17. At the request of members, the Administration has provided supplementary information on the progress of preparation for the establishment of the statutory IPCC and the updated procedures and guidelines made by IPCC. According to the IPCC Secretariat, most of the preparatory arrangements have been completed and the remaining items will be finalised shortly and, in any event, before the Ordinance commences operation. The Administration has stressed that as a statutory body, IPCC will have a high degree of flexibility and independence in working out its procedures and guidelines. It will also be duty-bound to ensure that its procedures and guidelines are consistent with the Ordinance.

18. The Administration has also provided to the Subcommittee the salient features of the key changes to the existing procedures and guidelines of CAPO. CAPO is awaiting IPCC's comments on its updated procedures and guidelines and will disseminate the updated procedures and guidelines within the Police in March 2009. It will ensure officers' compliance with the updated arrangements once the Ordinance commences operation.

19. The Subcommittee notes the view of Hon Emily LAU that the meeting procedure of the statutory IPCC has room for further improvement. Having regard to the Administration's intention to repeal the Commencement Notice and publish a new commencement notice, members have agreed that the preparatory arrangements for the establishment of the statutory IPCC and the relevant procedures and guidelines of IPCC and CAPO would be followed up by the subcommittee on the future commencement notice, if formed.

Recommendation

20. The Subcommittee notes that the Administration will repeal the Commencement Notice and will publish a new commencement notice in the Gazette in due course. The Subcommittee supports the Administration's proposal to defer the commencement of the Ordinance to 1 June 2009.

Advice Sought

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

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

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 Timothy FOK Tsun-ting, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon Cyd HO Sau-lan
Hon WONG Kwok-kin, BBS
Hon IP Kwok-him, GBS, JP

(Total : 15 Members)

Clerk Mr Raymond LAM

Legal Adviser Mr LEE Yu-sung

Date 13 February 2009