

**INDEPENDENT POLICE COMPLAINTS
COUNCIL BILL****CONTENTS**

Clause	Page
--------	------

PART 1**PRELIMINARY**

1. Short title	C791
2. Interpretation	C791

PART 2**INCORPORATION OF INDEPENDENT POLICE COMPLAINTS COUNCIL**

3. Incorporation of Council	C795
4. Membership of Council	C795
5. Appointment of Secretary, Legal Adviser and other employees	C797
6. Schedule 1 applicable to Council	C797

PART 3**FUNCTIONS OF COUNCIL**

7. Functions of Council	C797
-------------------------------	------

**Division 1—Functions relating to Commissioner's
Categorization of Complaints**

8. Commissioner to submit lists of complaints	C799
9. Complaints not to be categorized	C799
10. Complaints categorized as reportable complaints	C801
11. Belated complaints may be categorized as reportable complaints only if serious in nature	C801
12. Requests for review treated as reportable complaints	C803

Clause		Page
13.	Complaints categorized as non-reportable complaints	C803
14.	Making complaint or request for review on behalf of complainant	C803
15.	Reconsideration of categorization by Commissioner	C805

**Division 2—Functions relating to Investigation or Interim
Investigation Reports on Reportable Complaints**

16.	Commissioner to submit investigation reports on reportable complaints	C807
17.	Commissioner to submit interim investigation reports on reportable complaints	C807
18.	Council may advise Commissioner of its opinion or recommendation on investigation report	C809
19.	Council may conduct interview	C809

**Division 3—Other Functions relating to Reportable
Complaints etc.**

20.	Council may require Commissioner to provide information etc. relating to reportable complaints	C811
21.	Council may require Commissioner to investigate reportable complaints	C813
22.	Council may require Commissioner to inform complainant of classification of reportable complaints	C815
23.	Members of Council may attend interviews and observe collection of evidence	C815
24.	Council may require explanation in relation to actions taken etc. in connection with reportable complaints	C815
25.	Council may require Commissioner to submit statistics and reports	C815
26.	Council may require Commissioner to consult Council on orders and manuals relating to handling or investigation of reportable complaints	C817
27.	Commissioner to comply with requirements of Council	C817

Clause		Page
28.	Report to Chief Executive	C817

Division 4—Council's Powers relating to its Affairs

29.	Council may charge fees	C819
30.	Council may hold property, enter into contracts and borrow money	C819

PART 4

OBSERVERS SCHEME

31.	Appointment of observers	C819
32.	Function of observers	C819
33.	Schedule 2 applicable to observers	C819
34.	Observers may attend interviews and observe collection of evidence	C821
35.	Council may determine procedures, duty roster, etc. relating to observers	C821

PART 5

CONFIDENTIALITY AND PROTECTION OF COUNCIL AND ITS MEMBERS, ETC.

36.	Interpretation of Part 5	C823
37.	Duty to keep confidence	C823
38.	Protection of Council and its members, etc.	C825

PART 6

TRANSITIONAL AND SAVINGS PROVISIONS

39.	Interpretation of Part 6	C825
40.	Continuance of things done by former Council	C827
41.	Continuance of appointment	C827

Clause	Page
42. Lists submitted to former Council	C829

PART 7

CONSEQUENTIAL AMENDMENTS

Prevention of Bribery Ordinance

43. Public bodies	C829
-------------------------	------

The Ombudsman Ordinance

44. Organizations to which this Ordinance applies	C829
---	------

Schedule 1	Provisions with respect to members, proceedings, committees and finances of, and execution of documents by, and other miscellaneous matters of, Council	C831
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Schedule 2	Provisions with respect to observers	C845
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A BILL

To

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.

Enacted by the Legislative Council.

PART 1

PRELIMINARY

1. Short title

This Ordinance may be cited as the Independent Police Complaints Council Ordinance.

2. Interpretation

(1) In this Ordinance, unless the context otherwise requires—
“appointed member” (委任成員) means a member of the Council referred to in section 4(1)(c), and includes a person appointed under section 4 of Schedule 1 to act as an appointed member;

“categorization” (歸類) means the categorization by the Commissioner of a complaint as—

- (a) a reportable complaint; or
- (b) a non-reportable complaint;

“Chairman” (主席) means the Chairman of the Council referred to in section 4(1)(a), and includes a person appointed under section 4 of Schedule 1 to act as the Chairman;

“classification” (分類) means 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;

“Commissioner” (處長) means the Commissioner of Police;

“committee” (委員會) includes any panel or sub-group established by the Council under section 13 of Schedule 1;

“complainant” (投訴人) means a person who makes a complaint or a request for review or, where the complaint or request for review is made on behalf of another person, the person on whose behalf the complaint or request for review is made;

“Council” (警監會) means the body corporate incorporated by section 3 and known by the names referred to in section 3(1)(b);

“function” (職能) includes a power and a duty;

“Legal Adviser” (法律顧問) means the Legal Adviser to the Council appointed under section 5(1);

“member of the police force” (警隊成員) includes a public officer attached to the police force;

“mentally incapacitated person” (精神上無行為能力的人) means a person who is mentally disordered or mentally handicapped within the meaning of the Mental Health Ordinance (Cap. 136);

“non-reportable complaint” (無須具報投訴) means a complaint that must be categorized, in accordance with Division 1 of Part 3, as a non-reportable complaint;

“observer” (觀察員) means a person appointed to be an observer under section 31;

“police conduct” (警方行為) means the conduct, practice or procedure referred to in section 10(a);

“police force” (警隊) means the Hong Kong Police Force or the Hong Kong Auxiliary Police Force established under the Hong Kong Auxiliary Police Force Ordinance (Cap. 233);

“reportable complaint” (須具報投訴) means a complaint that must be categorized, in accordance with Division 1 of Part 3, as a reportable complaint;

“request for review” (覆核要求) means a request for reviewing the classification of a reportable complaint referred to in section 12;

“Secretary” (秘書) means the Secretary to the Council appointed under section 5(1);

“Vice-Chairman” (副主席) means a Vice-Chairman of the Council referred to in section 4(1)(b), and includes a person appointed under section 4 of Schedule 1 to act as a Vice-Chairman.

(2) In this Ordinance, a reference to the performance of a function includes the exercise of a power and the discharge of a duty.

PART 2

INCORPORATION OF INDEPENDENT POLICE COMPLAINTS COUNCIL

3. Incorporation of Council

(1) The Independent Police Complaints Council existing immediately before the commencement of this Ordinance—

(a) is hereby incorporated as a body corporate; and

(b) continues to be known in the English language as “Independent Police Complaints Council” and in the Chinese language as “投訴警方獨立監察委員會”.

(2) The Council has perpetual succession and may sue and be sued in its English or Chinese name.

(3) The Council is neither a servant nor an agent of the Government and does not enjoy any status, immunity or privilege of the Government.

4. Membership of Council

(1) The Council consists of the following members—

(a) a Chairman appointed by the Chief Executive;

(b) 3 Vice-Chairmen appointed by the Chief Executive; and

(c) not less than 8 other members appointed by the Chief Executive.

(2) A person who is a civil servant of the Government, or who was a member of the police force, is not eligible for appointment under subsection (1).

5. Appointment of Secretary, Legal Adviser and other employees

(1) The Council must appoint a Secretary and a Legal Adviser on terms approved by the Chief Executive on the advice of the Council.

(2) The Council may appoint, on terms determined by the Council, such other employees as the Council requires to assist it in performing its functions.

(3) The Council may engage any person for his technical or professional services in such manner and on such terms as it thinks fit.

6. Schedule 1 applicable to Council

Schedule 1 has effect with respect to the members, proceedings, committees and finances of, and the execution of documents by, and other miscellaneous matters of, the Council.

PART 3

FUNCTIONS OF COUNCIL

7. Functions of Council

(1) The functions of the Council are—

- (a) to observe, monitor and review the manner in which reportable complaints are handled or investigated by the Commissioner, and to make recommendations (as the Council considers appropriate) to the Commissioner or the Chief Executive or both of them in respect of the handling or investigation of reportable complaints;
- (b) to monitor actions taken or to be taken in respect of any member of the police force by the Commissioner in connection with reportable complaints, and to advise (as the Council considers appropriate) the Commissioner or the Chief Executive or both of them of its opinion on such actions;
- (c) to identify any fault or deficiency in any practice or procedure adopted by the police force that has led to or might lead to reportable complaints, and to make recommendations (as the Council considers appropriate) to the Commissioner or the Chief Executive or both of them in respect of such practice or procedure;
- (d) to review anything submitted to it by the Commissioner pursuant to this Ordinance;
- (e) to promote public awareness of the role of the Council; and

(f) (without limiting the generality of the foregoing) any function conferred on it by or under this or any other Ordinance.

(2) The Council may do all such things that are reasonably necessary for, or incidental or conducive to, the performance of its functions under this Ordinance.

Division 1—Functions relating to Commissioner's Categorization of Complaints

8. Commissioner to submit lists of complaints

(1) The Commissioner must submit to the Council at such intervals, and in such manner, as the Commissioner and the Council may agree—

- (a) a list of reportable complaints; and
- (b) a list of non-reportable complaints.

(2) A list submitted under subsection (1)(a) must include a brief description of all reportable complaints that the Commissioner has received since the end of the period covered by the last list so submitted.

(3) A list submitted under subsection (1)(b) must include—

- (a) a brief description of all non-reportable complaints that the Commissioner has received since the end of the period covered by the last list so submitted;
- (b) the reasons for categorizing the complaints as non-reportable complaints; and
- (c) in relation to a complaint that is a non-reportable complaint only by virtue of section 11(a), the reason for the Commissioner's opinion that the complaint is not of a serious nature.

9. Complaints not to be categorized

In compiling a list under section 8(1)(a) or (b), the Commissioner must not take into account any complaint that—

- (a) a person makes in his official capacity as a member of the police force;
- (b) arises from the issue of a summons and does not relate to police conduct;
- (c) arises from the issue of any notice for the imposition of a fixed penalty under any enactment and does not relate to police conduct; or

- (d) a person is empowered to investigate pursuant to any function conferred on the person by any other Ordinance, except where the complaint relates to police conduct and the power of investigation does not extend to the investigation of that police conduct.

10. Complaints categorized as reportable complaints

Subject to sections 9, 11 and 12, a complaint received by the Commissioner must be categorized as a reportable complaint if the complaint—

- (a) relates to—
 - (i) the conduct of a member of the police force while on duty or in the execution or purported execution of his duties;
 - (ii) the conduct of a member of the police force who identified himself as such a member while off duty; or
 - (iii) any practice or procedure adopted by the police force;
- (b) in the opinion of the Commissioner, is not vexatious or frivolous and is made in good faith;
- (c) is made by or on behalf of a complainant directly affected by the police conduct;
- (d) is made by a person (whether on his own behalf or on behalf of a complainant) who has properly identified himself and provided the Commissioner with a means of contacting him; and
- (e) (if made by a person on behalf of a complainant) is made in accordance with section 14.

11. Belated complaints may be categorized as reportable complaints only if serious in nature

A complaint may not be categorized as a reportable complaint unless—

- (a) the complaint is made to the Commissioner—
 - (i) within a period of 24 months from the date of the incident giving rise to the complaint; or
 - (ii) where proceedings relating to the subject matter of the complaint have been commenced in any court, magistracy or statutory tribunal within the period referred to in subparagraph (i), within a period of 12 months from the date of the final determination of such proceedings, whichever expires later; or

- (b) though made to the Commissioner after the expiry of the period applicable to it under paragraph (a)(i) or (ii), in the opinion of the Commissioner, the complaint is of a serious nature.

12. Requests for review treated as reportable complaints

(1) A request for review made to the Commissioner for reviewing the classification of a reportable complaint (“the relevant classification”) is to be treated as a reportable complaint only if the Commissioner is of the opinion that the request for review—

- (a) is not vexatious or frivolous;
- (b) is made in good faith; and
- (c) (if made by a person on behalf of a complainant) is made in accordance with section 14.

(2) On such review, the Commissioner is not required to conduct a fresh or further investigation of any fact or evidence considered in the determination of the relevant classification unless the person who makes the request for review puts forward a point of view on the analysis of that fact or evidence and—

- (a) the Commissioner did not consider such a point of view in his determination of the relevant classification;
- (b) the point of view, if established after a fresh or further investigation of that fact or evidence, may result in a change of the relevant classification; and
- (c) the consideration of the point of view reasonably requires a fresh or further investigation of that fact or evidence.

13. Complaints categorized as non-reportable complaints

Subject to section 9, a complaint received by the Commissioner is a non-reportable complaint if it is not a reportable complaint.

14. Making complaint or request for review on behalf of complainant

(1) For the purposes of this Ordinance, a person (“the representative”) may make a complaint or a request for review on behalf of a complainant only if—

- (a) the complainant is below the age of 16 years at the time when the complaint or request for review (as the case may be) is made and the representative is his parent or guardian;
 - (b) the complainant is a mentally incapacitated person or is unable to make the complaint or request for review (as the case may be) himself due to death or illness, and the representative is—
 - (i) a relative of the complainant; or
 - (ii) a guardian (as defined in section 2(1) of the Mental Health Ordinance (Cap. 136)) of the complainant; or
 - (c) the representative has written authorization from the complainant to make the complaint or request for review (as the case may be) on behalf of the complainant.
- (2) For the purposes of subsection (1)(b), “relative” (親屬) means—
- (a) a spouse, child, parent, grandparent or grandchild; or
 - (b) a person who is, or is the issue of, a brother, sister, uncle or aunt.
- (3) In deducing any relationship for the purposes of subsections (1)(b) and (2)—
- (a) an adopted person is treated as the child of the person or persons by whom he was adopted;
 - (b) any relationship by affinity is treated as a relationship by consanguinity, any relationship of the half blood as a relationship of the whole blood, and the step-child of a person as the child of that person; and
 - (c) an illegitimate child is treated as a legitimate child of his mother and reputed father.

15. Reconsideration of categorization by Commissioner

(1) If the Council considers that a complaint included in the list of non-reportable complaints under section 8 should be categorized as a reportable complaint, it may advise the Commissioner of its opinion, and the Commissioner must—

- (a) have regard to such opinion; and
- (b) reconsider the categorization of the complaint.

(2) The Commissioner must, as soon as practicable after the completion of his reconsideration under subsection (1), inform the Council of the outcome of his reconsideration.

(3) For the purpose of performing the Council’s function under subsection (1), the Council may require the Commissioner to provide explanations to support—

- (a) the categorization of a complaint as a non-reportable complaint; and

- (b) in relation to a complaint that is a non-reportable complaint only by virtue of section 11(a), the Commissioner's opinion that the complaint is not of a serious nature.

Division 2—Functions relating to Investigation or Interim Investigation Reports on Reportable Complaints

16. Commissioner to submit investigation reports on reportable complaints

(1) The Commissioner must, as soon as practicable after completing the investigation of a reportable complaint, submit to the Council an investigation report.

(2) Subject to subsection (3), an investigation report submitted under subsection (1) must contain—

- (a) a summary of the investigation;
- (b) a finding of facts in relation to the complaint and the evidence in support of the finding;
- (c) the classification of the complaint, and the reasons for the classification;
- (d) an account of the action taken or to be taken by the Commissioner in connection with the complaint; and
- (e) such other information as the Commissioner thinks necessary.

(3) Subsection (2)(a) and (b) does not apply to an investigation report on a reportable complaint classified as one that is for informal resolution.

17. Commissioner to submit interim investigation reports on reportable complaints

(1) If the investigation of a reportable complaint is not completed within—

- (a) 6 months from the date of receipt of the complaint; or
- (b) such shorter period as the Commissioner and the Council may agree,

then, the Commissioner must, as soon as practicable after the expiry of those 6 months or that shorter period, submit to the Council an interim investigation report.

(2) Until the completion of the investigation, the Commissioner must submit to the Council further interim investigation reports after the expiry of every successive period of—

- (a) 6 months; or

(b) such shorter period as the Commissioner and the Council may agree.

(3) An interim investigation report submitted under subsection (1) or (2) must explain—

(a) the progress of the investigation; and

(b) the reasons for not being able to complete the investigation within the 6 months' period or such shorter period covered by the report.

(4) The Council may advise the Commissioner of its opinion on the explanation given under subsection (3).

18. Council may advise Commissioner of its opinion or recommendation on investigation report

(1) The Council may, in relation to an investigation report submitted under section 16, advise the Commissioner of—

(a) its recommendation on the report;

(b) its recommendation on the classification of the complaint;

(c) its recommendation on the Commissioner's handling or investigation of the complaint;

(d) its recommendation on any fault or deficiency identified in any practice or procedure adopted by the police force; or

(e) its opinion on the action taken or to be taken in respect of a member of the police force by the Commissioner in connection with the complaint.

(2) The Council may, if it considers appropriate, submit any part of its opinion or recommendation referred to in subsection (1) to the Chief Executive for consideration.

19. Council may conduct interview

(1) At any time after an investigation report has been submitted to the Council under section 16, the Council may, for the purpose of considering the report, interview any person who is or may be able to provide information or other assistance to the Council in relation to the report.

(2) At any time after an interim investigation report has been submitted to the Council under section 17, the Council may, with the consent of the Commissioner and for the purpose of considering the report, interview any person who is or may be able to provide information or other assistance to the Council in relation to the report.

(3) Unless the Commissioner is of the opinion that an interview under subsection (2) would be likely to prejudice the investigation of any crime or any complaint made to him, he must give his consent to the interview.

(4) An interview under this section must be conducted in private.

(5) Subject to subsection (7), the Council may decide who may be present at an interview.

(6) A solicitor or counsel does not have a right of audience before the Council at an interview unless he is the person who is interviewed under this section.

(7) Where a person who is interviewed under this section (“that person”) is below the age of 16 years, or is known to the Council to be a mentally incapacitated person, that person must be interviewed in the presence of—

(a) his parent or guardian;

(b) an adult who has an interest in the welfare of that person and is, in the opinion of the Council, an appropriate person to be present at the interview; or

(c) such other person as the Council may decide in any particular case.

(8) The Council must keep a record of every interview under this section, and such record must not be used for any purpose other than for performing the Council’s functions under this Ordinance.

(9) For the purposes of subsection (8), disclosure of information for any purpose that is allowed under section 37 is not to be regarded as use of the record.

Division 3—Other Functions relating to Reportable Complaints etc.

20. Council may require Commissioner to provide information etc. relating to reportable complaints

(1) The Council may require the Commissioner—

(a) to provide any information or material relating to a reportable complaint, including any written statement taken from a person interviewed by a member of the police force in respect of a reportable complaint, and any video recording of the interview; and

(b) to clarify any fact or discrepancy relating to a reportable complaint.

(2) In this section, “video recording” (錄影紀錄) means a recording, on any medium, from which a moving image may by any means be produced and includes the accompanying sound-track.

21. Council may require Commissioner to investigate reportable complaints

(1) Subject to subsection (2), the Council may require the Commissioner to investigate (whether or not there has been any previous investigation) a reportable complaint.

(2) If the reportable complaint is a request for review, then, the Council may require the Commissioner to investigate (whether or not there has been any previous investigation) any matter relating to the request for review only if—

- (a) in the case of the first request for review in respect of a reportable complaint, the request for review is made within 30 days after—
 - (i) the complainant; or
 - (ii) (where the reportable complaint was made by a person on behalf of the complainant) the person who made the complaint, was notified by the Commissioner of the classification of the reportable complaint;
- (b) in the case of a second or subsequent request for review in respect of a reportable complaint, the request for review is made within 30 days after—
 - (i) the complainant; or
 - (ii) (where the last request for review was made by a person on behalf of the complainant) the person who made the last request for review, was notified by the Council of the outcome of the Commissioner's last review of the classification of the reportable complaint; or
- (c) in the case of a request for review made after the expiry of the period applicable to the request for review under paragraph (a) or (b), the Council is of the opinion that exceptional circumstances exist in relation to the request for review.

(3) In determining whether exceptional circumstances exist for the purposes of subsection (2)(c), the Council may take into account any factor including, but not limited to, the following—

- (a) whether there is any fresh evidence in respect of the request for review; and
- (b) whether there are any justifiable reasons for making the request for review after the expiry of the period applicable to the request for review under subsection (2)(a) or (b).

22. Council may require Commissioner to inform complainant of classification of reportable complaints

The Council may require the Commissioner to inform—

- (a) the complainant; or
 - (b) (where the reportable complaint was made by a person on behalf of the complainant) the person who made the complaint,
- of the classification of the reportable complaint and the reasons for the classification.

23. Members of Council may attend interviews and observe collection of evidence

(1) A member of the Council may at any time and without prior appointment—

- (a) attend an interview conducted by the Commissioner in respect of a reportable complaint; and
- (b) observe the collection of evidence by the Commissioner in the investigation of a reportable complaint.

(2) Where a member of the Council attends the interview or observes the collection of evidence, sections 34 and 35 apply, with necessary modifications, to that member as if a reference to an observer in those sections were a reference to that member.

24. Council may require explanation in relation to actions taken etc. in connection with reportable complaints

The Council may require the Commissioner to provide an explanation in relation to any action taken or to be taken in respect of a member of the police force by the Commissioner in connection with any reportable complaint.

25. Council may require Commissioner to submit statistics and reports

The Council may require the Commissioner—

- (a) to compile and submit to the Council statistics of the types of conduct of members of the police force that have led to reportable complaints; and
- (b) to submit to the Council a report on any action taken or to be taken by the Commissioner in respect of a recommendation of the Council made under section 7(1)(a) or (c).

26. Council may require Commissioner to consult Council on orders and manuals relating to handling or investigation of reportable complaints

(1) To enable the Council to make such recommendations as the Council sees fit to the Commissioner, the Council may require the Commissioner to consult the Council on—

- (a) any proposed new order or manual of the police force that relates to the handling or investigation of reportable complaints; or
- (b) any significant amendment proposed to be made to—
 - (i) the police general orders made under section 46 of the Police Force Ordinance (Cap. 232);
 - (ii) the headquarter orders issued under section 47 of that Ordinance;
 - (iii) the Hong Kong Police Force Procedures Manual; or
 - (iv) any other orders or manuals of the police force, in so far as the amendment relates to the handling or investigation of reportable complaints.

(2) For the purposes of subsection (1)(b), an amendment is significant if it materially changes—

- (a) the meaning or interpretation of; or
 - (b) the procedures to be followed under,
- any provision of the order or manual of the police force.

27. Commissioner to comply with requirements of Council

Notwithstanding section 4 of the Police Force Ordinance (Cap. 232), the Commissioner must comply with any requirement made by the Council under this Ordinance unless he is satisfied that compliance with the requirement would be likely to prejudice the security of Hong Kong or the investigation of any crime.

28. Report to Chief Executive

The Council may from time to time make such reports to the Chief Executive as it thinks necessary.

Division 4—Council's Powers relating to its Affairs**29. Council may charge fees**

The Council may charge fees for providing copies of, or extracts from, documents or publications of the Council.

30. Council may hold property, enter into contracts and borrow money

For the purposes of this Ordinance, the Council may—

- (a) acquire, hold and dispose of movable or immovable property;
- (b) enter into contracts or other agreements; and
- (c) with the approval of the Financial Secretary, borrow money on security or other conditions.

PART 4**OBSERVERS SCHEME****31. Appointment of observers**

(1) Subject to subsection (2), the Secretary for Security may appoint such person as he thinks fit to be an observer.

(2) A person—

- (a) who is a civil servant of the Government, the Secretary, the Legal Adviser or any other employee of the Council; or
- (b) who was a member of the police force,

is not eligible to be appointed as an observer.

32. Function of observers

The function of an observer is to assist the Council to observe, in accordance with the provisions of this Part, the manner in which the Commissioner handles or investigates reportable complaints.

33. Schedule 2 applicable to observers

Schedule 2 has effect with respect to observers.

34. Observers may attend interviews and observe collection of evidence

(1) For the purposes of section 32, an observer may at any time and without prior appointment—

- (a) attend an interview conducted by the Commissioner in respect of a reportable complaint; and
- (b) observe the collection of evidence by the Commissioner in the investigation of a reportable complaint.

(2) After having attended the interview or having observed the collection of evidence, the observer must submit a report to the Council stating—

- (a) whether, in his opinion, the interview or collection of evidence has been conducted in a fair and impartial manner; and
- (b) where applicable, the particulars of any irregularities detected by the observer in respect of the interview or collection of evidence.

(3) If, during the interview or collection of evidence, it comes to the knowledge of the observer that he has an interest in the reportable complaint, he must—

- (a) in the case of an interview, disclose the nature of his interest to—
 - (i) the police officer who is designated by the Commissioner to conduct the interview; and
 - (ii) the person who is being interviewed;
- (b) in the case of collection of evidence, disclose the nature of his interest to—
 - (i) the police officer who is designated by the Commissioner to conduct the collection of evidence; and
 - (ii) (if applicable) the person from whom evidence is being collected;
- (c) withdraw from the interview or observation of the collection of evidence (as the case may be); and
- (d) report the nature of his interest to the Council.

35. Council may determine procedures, duty roster, etc. relating to observers

The Council may determine—

- (a) the procedure that applies in relation to an observer's attendance at an interview conducted by the Commissioner in respect of a reportable complaint;
- (b) the procedure that applies in relation to an observer's observation of the collection of evidence by the Commissioner in the investigation of a reportable complaint;
- (c) the drawing up of a duty roster of the observers; and

- (d) any operational matter or arrangement that relates to the performance of the functions of observers under the provisions of this Part.

PART 5

CONFIDENTIALITY AND PROTECTION OF COUNCIL AND ITS MEMBERS, ETC.

36. Interpretation of Part 5

In this Part—

“protected information” (受保護資料) means matters relating to any complaint that come to a specified person’s actual knowledge in the performance of his functions under this Ordinance;

“specified person” (指明人士) means—

- (a) the Council;
- (b) a member of the Council;
- (c) the Secretary, the Legal Adviser or any other employee of the Council;
- (d) a person engaged by the Council for his technical or professional services;
- (e) an observer; or
- (f) a person who at any time had any of the identities described in paragraphs (b), (c), (d) and (e).

37. Duty to keep confidence

(1) Except in the circumstances provided for in subsection (2), a specified person must not disclose any protected information.

(2) Subsection (1) does not prevent a specified person from disclosing any protected information if the disclosure is necessary—

- (a) for the performance of his functions under this Ordinance;
- (b) for the purpose of reporting evidence of any crime to such authority as he considers appropriate;
- (c) for the purpose of complying with—
 - (i) an order of a court; or
 - (ii) a requirement in or made under an enactment or any other law,in relation to any criminal, civil or disciplinary proceedings; or

(d) for the purpose of complying with a data access request made under section 18 of the Personal Data (Privacy) Ordinance (Cap. 486).

(3) Subject to subsection (4), subsection (2)(a) does not authorize the disclosure of the identity of—

(a) any complainant;

(b) any member of the police force whose conduct is the subject of a complaint; or

(c) any person who assists or has assisted the Commissioner in the handling or investigation of a complaint.

(4) A disclosure of any identity referred to in subsection (3)(a), (b) or (c) may be made pursuant to subsection (2)(a) if the disclosure is made to—

(a) a specified person within the meaning of paragraph (a), (b), (c), (d) or (e) of the definition of “specified person” in section 36;

(b) the complainant;

(c) the Commissioner;

(d) a person who assists or has assisted the Commissioner in the handling or investigation of a complaint; or

(e) a person interviewed by the Council pursuant to section 19.

38. Protection of Council and its members, etc.

(1) Any act done, or omitted to be done, by a specified person in good faith in the performance or purported performance of a function under this Ordinance will not render the specified person liable to any civil proceedings.

(2) For the purposes of the law of defamation, if a specified person makes any comment or publishes any matter in relation to a complaint—

(a) in any communication, report or statement, in writing or otherwise; and

(b) for the performance of his functions under this Ordinance, that comment or publication is absolutely privileged.

(3) The protection given by subsection (1) or (2) does not apply to a specified person within the meaning of paragraph (d) of the definition of “specified person” in section 36.

PART 6

TRANSITIONAL AND SAVINGS PROVISIONS

39. Interpretation of Part 6

In this Part—

“commencement date” (生效日期) means the date of commencement of this Ordinance;

“former Council” (前警監會) means the Independent Police Complaints Council existing immediately before the commencement date;

“former observer” (前觀察員) means a person who was an observer under the scheme known as the Independent Police Complaints Council observers scheme existing immediately before the commencement date.

40. Continuance of things done by former Council

(1) The enactment of this Ordinance does not affect the validity of anything done by, in relation to or on behalf of the former Council before the commencement date.

(2) Anything done before the commencement date by, in relation to or on behalf of the former Council pursuant to or in connection with its functions has effect as from that date as if done by, in relation to or on behalf of the Council.

(3) Anything that, immediately before the commencement date, is required to be done and is in the process of being done by, in relation to or on behalf of the former Council pursuant to or in connection with its functions may, as from that date, be continued by, in relation to or on behalf of the Council to the extent that it is consistent with this Ordinance.

41. Continuance of appointment

(1) Subject to subsection (2), a person who, immediately before the commencement date—

(a) holds an appointment as the Chairman, a Vice-Chairman or any other member of the former Council; or

(b) is a former observer,

continues to be, as from that date, the Chairman, a Vice-Chairman or such other member of the Council or an observer (as the case may be) as if he were appointed under this Ordinance.

(2) The person in subsection (1) continues to hold his appointment only for the unexpired term under his previous appointment, but is eligible for reappointment under section 1(b) of Schedule 1 or section 1(b) of Schedule 2 (as the case may be).

(3) A person who, immediately before the commencement date, is an officer (including the Secretary and the Legal Adviser) of the former Council continues to be, as from that date, such officer of the Council on the same terms and conditions as those applicable to that person immediately before that date.

42. Lists submitted to former Council

In relation to—

- (a) the first list of reportable complaints submitted under section 8(1)(a); or
- (b) the first list of non-reportable complaints submitted under section 8(1)(b),

the last list containing the corresponding information that was submitted by the Commissioner to the former Council before the commencement date is to be regarded as—

- (c) the last list of reportable complaints for the purposes of section 8(2); or
- (d) the last list of non-reportable complaints for the purposes of section 8(3),

as may be applicable.

PART 7**CONSEQUENTIAL AMENDMENTS****Prevention of Bribery Ordinance****43. Public bodies**

Schedule 1 to the Prevention of Bribery Ordinance (Cap. 201) is amended by adding—

“109. Independent Police Complaints Council.”.

The Ombudsman Ordinance**44. Organizations to which this Ordinance applies**

Part II of Schedule 1 to The Ombudsman Ordinance (Cap. 397) is amended by repealing “Secretariat of the Independent Police Complaints Council.”.

SCHEDULE 1

[ss. 2, 6 & 41]

PROVISIONS WITH RESPECT TO MEMBERS, PROCEEDINGS, COMMITTEES AND
FINANCES OF, AND EXECUTION OF DOCUMENTS BY, AND OTHER
MISCELLANEOUS MATTERS OF, COUNCIL

Members of Council

**1. Term of office of Chairman, Vice-Chairmen
and appointed members**

The Chairman, a Vice-Chairman or an appointed member (other than a person appointed under section 4)—

- (a) is to be appointed for a term not exceeding 2 years; and
- (b) is eligible for reappointment for a further term or terms not exceeding 2 years each.

**2. Resignation of Chairman, Vice-Chairmen and
appointed members**

(1) The Chairman, a Vice-Chairman or an appointed member may resign from office by giving notice in writing to the Chief Executive.

(2) The resignation under subsection (1) takes effect on the date the Chief Executive receives the notice or the date specified in the notice (whichever is the later).

**3. Removal of Chairman, Vice-Chairmen and
appointed members**

The Chief Executive may by notice in writing remove the Chairman, a Vice-Chairman or an appointed member from office if the Chief Executive is satisfied that the Chairman, Vice-Chairman or appointed member (as the case may be) is unable or unfit to perform his functions due to permanent incapacity or other sufficient cause.

4. Acting appointment

The Chief Executive may appoint any person to act as the Chairman, a Vice-Chairman or an appointed member if—

- (a) the Chairman, Vice-Chairman or appointed member (as the case may be) is precluded by illness, absence from Hong Kong or any other cause from performing his functions; or
- (b) the office of the Chairman, Vice-Chairman or appointed member (as the case may be) is vacant pending a new appointment or reappointment.

5. Fees and allowances to Chairman, Vice-Chairmen and appointed members

The Council may pay the Chairman, Vice-Chairmen and appointed members such fees and allowances as the Chief Executive may determine.

Execution of documents by Council

6. Seal and documents of Council

- (1) The Council is to have a common seal.
- (2) The common seal may be affixed to a document only if authorized by a resolution of the Council.
- (3) The affixing of the common seal is to be authenticated by the signatures of any 2 members of the Council authorized by the Council, either generally or specially in that behalf.
- (4) A document purporting to be duly executed under the common seal is to be regarded as having been duly executed unless the contrary is proved.
- (5) Any contract or instrument which, if entered into or executed by a natural person, would not be required to be entered into or executed under seal, may be entered into or executed on behalf of the Council by any of its members, the Secretary, the Legal Adviser or any other employee of the Council generally or specially authorized by the Council in that behalf.

Proceedings of Council

7. Council meetings

- (1) The Council is to meet as often as is necessary for the purpose of performing its functions.
- (2) The Chairman may appoint the time and place for the Council to meet.

8. Quorum for Council meetings

The quorum for a meeting of the Council is 6 members of the Council.

9. Chairman to preside at Council meetings

(1) The Chairman must preside at a meeting of the Council.

(2) If the Chairman is absent or vacates the chair, a Vice-Chairman elected by the appointed members present must preside at the meeting.

(3) If neither the Chairman nor the 3 Vice-Chairmen can preside at the meeting, an appointed member elected from amongst the appointed members present must preside at the meeting.

10. Disclosure of interest

If a member of the Council has an interest in a matter being discussed or to be discussed at a meeting of the Council, he must disclose the nature of his interest at or before the meeting.

11. Determination of matters at Council meetings

(1) A matter for determination at a meeting of the Council must be decided by a majority of the votes of the members of the Council present and voting on that matter.

(2) If there is an equality of votes, the person presiding at the meeting has a casting vote in addition to his original vote.

(3) Subject to subsection (5), 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.

(4) Subject to subsection (5), a written resolution that is approved by a majority of all members of the Council is as valid and effectual as if it had been passed at a meeting of the Council by the votes of the members so approving.

(5) If any member of the Council requests by notice in writing addressed to the Secretary that a matter referred to in the papers circulated under subsection (3) be determined at a meeting of the Council, the matter must be so determined.

(6) In the case of a written resolution, if a member of the Council has an interest in the matter, he must state his interest in the papers being circulated.

(7) For the avoidance of doubt, a reference to circulation of papers in this section includes circulation of information by electronic means, and a reference to the papers in this section must be construed accordingly.

12. Council may determine its own procedure

Subject to the other provisions of this Ordinance, the Council may determine its own procedure, including who may appoint the time and place for the Council to meet in the absence of the Chairman.

Committees of Council

13. Establishment of committees

The Council may establish committees, panels or sub-groups to assist the Council in the performance of any of its functions under this Ordinance.

14. Disclosure of interest

If a member of a committee has an interest in a matter being discussed or to be discussed at a meeting of the committee, he must disclose the nature of his interest at or before the meeting.

15. Chairman of committee

(1) The chairman of a committee must be elected from amongst its members.

(2) The chairman of a committee must preside at a meeting of the committee.

(3) If the chairman of a committee is absent or vacates the chair, a member of the committee elected from amongst the members of the committee present must preside at the meeting.

16. Determination of matters at committee meetings

(1) A matter for determination at a meeting of a committee must be decided by a majority of the votes of the members of the committee present and voting on that matter.

(2) If there is an equality of votes, the person presiding at the meeting has a casting vote in addition to his original vote.

(3) Subject to subsection (5), anything that may be done at a meeting of a committee may be done by circulation of papers to all members of the committee without a meeting.

(4) Subject to subsection (5), a written resolution that is approved by a majority of all members of a committee is as valid and effectual as if it had been passed at a meeting of the committee by the votes of the members so approving.

(5) If any member of a committee requests by notice in writing addressed to the Secretary that a matter referred to in the papers circulated under subsection (3) be determined at a meeting of the committee, the matter must be so determined.

(6) In the case of a written resolution, if a member of the committee has an interest in the matter, he must state his interest in the papers being circulated.

(7) For the avoidance of doubt, a reference to circulation of papers in this section includes circulation of information by electronic means, and a reference to the papers in this section must be construed accordingly.

17. Committee may determine its own procedure

Subject to the other provisions of this Ordinance, each committee may determine its own procedure.

Finances of Council

18. Resources of Council

The resources of the Council consist of—

- (a) all money paid by the Government to the Council and appropriated for that purpose by the Legislative Council; and
- (b) all other money and property, including fees, gifts, donations, interest and accumulations of income, received by the Council.

19. Investment of funds

(1) Subject to subsection (2), the Council may invest money that is not immediately required to be expended.

(2) The Council must not invest money except in such form of investment as the Financial Secretary approves.

20. Financial year

The financial year of the Council is—

- (a) the period beginning on the date of commencement of this Ordinance and ending on 31 March in the next following year; and
- (b) the period of 12 months ending on 31 March in each subsequent year.

21. Council to keep proper accounts

- (1) The Council must keep proper accounts of its financial transactions.
- (2) As soon as practicable after the end of a financial year of the Council, the Council must prepare—
 - (a) a statement of accounts for that financial year containing an income and expenditure account and a cash flow statement; and
 - (b) a balance sheet showing the financial position of the Council as at the end of that financial year.

22. Audit of statement of accounts

- (1) The Council must appoint as its auditor a person who is registered under the Professional Accountants Ordinance (Cap. 50) and holds a practising certificate within the meaning of that Ordinance.
- (2) As soon as practicable after the end of a financial year of the Council, the auditor must—
 - (a) audit the accounts and the statement of accounts prepared by the Council for that financial year; and
 - (b) submit to the Council a report on the statement of accounts.

23. Annual reports of Council

- (1) As soon as practicable and in any case not later than 6 months after the end of a financial year of the Council, or such further period as the Chief Executive may allow, the Council must submit to the Chief Executive—
 - (a) a report on the performance of the Council's functions under this Ordinance during that financial year;
 - (b) a copy of the statement of accounts prepared by the Council for that financial year; and
 - (c) a copy of the auditor's report on the statement of accounts prepared by the Council that is submitted to the Council under section 22(2).
- (2) The Council must cause the documents referred to in subsection (1) to be tabled in the Legislative Council as soon as practicable after receiving the Chief Executive's approval for tabling.

24. Director of Audit's examination

(1) The Director of Audit may, in respect of any financial year of the Council, conduct an examination into the economy, efficiency and effectiveness with which the Council has expended its resources in performing its functions.

(2) The Director of Audit—

- (a) has a right of access at all reasonable times to all such records, books, vouchers, documents, cash, receipts, stamps, securities, stores and any other property in the custody or under the control of the Council as he may reasonably require for the purpose of conducting an examination under this section; and
- (b) is entitled to require from any person who holds or is accountable for any such document or materials such information and explanation as he considers reasonably necessary for that purpose.

(3) The Director of Audit may report to the President of the Legislative Council the results of an examination conducted by him under this section.

(4) Subsection (1) does not entitle the Director of Audit to question the merits of the policy objectives of the Council.

Miscellaneous matters

25. Delegation of functions

(1) The Council may delegate in writing any of its functions under this Ordinance to a committee, a member of the Council, the Secretary, the Legal Adviser or any other employee of the Council, but a function specified in subsection (6) may not be so delegated.

(2) A delegation under this section may be general or limited and may be subject to conditions.

(3) The Council may, at any time, amend or revoke a delegation made under this section.

(4) A delegate of the Council under this section is presumed to be acting in accordance with the terms of the relevant delegation in the absence of evidence to the contrary.

(5) A delegated function may be performed by the Council despite the delegation.

(6) The functions that the Council may not delegate under subsection (1) are—

- (a) the power to delegate under that subsection;

- (b) the duty to submit an annual report, statement of accounts and auditor's report to the Chief Executive under section 23(1); and
- (c) the power to make a report to the Chief Executive under section 28 of this Ordinance.

26. Exemption from taxation

The Council is exempt from taxation under the Inland Revenue Ordinance (Cap. 112).

SCHEDULE 2

[ss. 33 & 41]

PROVISIONS WITH RESPECT TO OBSERVERS

1. Term of office of observers

An observer—

- (a) is to be appointed for a term not exceeding 2 years; and
- (b) is eligible for reappointment for a further term or terms not exceeding 2 years each.

2. Resignation of observers

(1) An observer may resign from office by giving notice in writing to the Secretary for Security.

(2) The resignation under subsection (1) takes effect on the date the Secretary for Security receives the notice or the date specified in the notice (whichever is the later).

3. Removal of observers

The Secretary for Security may by notice in writing remove an observer from office if the Secretary for Security is satisfied that the observer is unable or unfit to perform his functions due to permanent incapacity or other sufficient cause.

4. Fees and allowances to observers

The Council may pay the observers such fees and allowances as the Secretary for Security approves.

Explanatory Memorandum

The main object of this Bill is to incorporate the existing Independent Police Complaints Council and to provide for the Council's functions of observing and monitoring the handling and investigation of reportable complaints by the Commissioner of Police ("the Commissioner") and its powers as such incorporated body.

2. Clause 2 contains definitions that are necessary for the interpretation of the Bill.

3. Clause 3 incorporates the Council as a body corporate. On and after the incorporation, the Council will continue to be known in the English language as "Independent Police Complaints Council" ("the Council") and in the Chinese language as "投訴警方獨立監察委員會".

4. Clause 4 sets out the membership of the Council and provides for the appointment of its Chairman, Vice-Chairmen and other members.

5. Clause 5 provides for the appointment of the Secretary, the Legal Adviser and other employees of the Council. The Council may also engage any person for his technical or professional services.

6. Clause 6 (as read with Schedule 1) provides for the proceedings and other affairs of the Council.

7. Clause 7 provides for the Council's functions (which include powers and duties, as defined in clause 2(1)).

8. Clauses 8 to 15 relate to categorization of complaints that the Commissioner has received.

9. Clauses 16 to 19 require the Commissioner to submit, in respect of a reportable complaint, an investigation report upon completion of the investigation and (if applicable) interim investigation reports to the Council. Clause 19 confers power on the Council to interview any person for information or other assistance in relation to the investigation report.

10. Clauses 20 to 28 provide for the Council's functions that relate to reportable complaints and the Council's power to require the Commissioner to do certain things.

11. Clauses 29 and 30 spell out certain powers of the Council that relate to the Council's management of its own affairs.
12. Clauses 31 to 35 provide for observers to be appointed to assist the Council in observing the manner in which reportable complaints are handled or investigated by the Commissioner. Those clauses also contain provisions that deal with matters connected with observers.
13. Clause 36 contains the definitions of "protected information" and "specified person", which are necessary for the interpretation of clauses 37 and 38.
14. Clause 37 imposes on a specified person (which expression includes the Council, a member of the Council, etc.) a duty not to disclose any protected information.
15. Clause 38 gives protection to certain specified persons in respect of acts done in good faith, or comments and publication made in specified circumstances.
16. Clauses 39 to 42 contain transitional and savings provisions.
17. Clauses 43 and 44 make consequential amendments to the Prevention of Bribery Ordinance (Cap. 201) and The Ombudsman Ordinance (Cap. 397) respectively.
18. Schedule 1 (as read with clause 6) has effect with respect to the proceedings and other affairs of the Council.
19. Schedule 2 (as read with clause 33) has effect with respect to observers.