

立法會

Legislative Council

LC Paper No. LS120/06-07

**Paper for the House Committee Meeting
on 5 October 2007**

Legal Service Division Report on Independent Police Complaints Council Bill

I. SUMMARY

- 1. Objects of the Bill**
 - (a) to incorporate the existing Independent Police Complaints Council (“IPCC”) as a body corporate (“the proposed Council”);
 - (b) to make provisions for the functions and powers of the proposed Council;
 - (c) to make provisions for appointment of observers; and
 - (d) to make provisions for connected matters.

- 2. Comments**

The Bill provides for the incorporation of the IPCC as a statutory body. The Bill contains provisions relating to membership, functions, powers and procedures of the proposed Council. The Bill proposes a “through train” arrangement for the members, observers and staff of the existing IPCC. The Bill also deals with certain transitional arrangements.

- 3. Public Consultation**

The Administration conducted a public consultation exercise in March and April 2002 on the proposal to convert the existing IPCC into a statutory body. The majority of the respondents supported the proposal. As to investigative powers, some supported maintaining the status quo of the Police continuing to conduct investigations into complaints. Others supported conferring investigative powers on the proposed Council. There were also comments on the operation of the existing Council and the Observers Scheme.

- 4. Consultation with LegCo Panel**

The Panel on Security was briefed by the Administration on 2 May and 10 July 2002 respectively on the progress and the results of the public consultation exercise to establish the existing IPCC as a statutory body. A more recent briefing was conducted at the meeting of the Panel on 6 June 2006 during which the Panel was briefed on the main legislative proposals.

- 5. Conclusion**

The status of the IPCC as well as its powers and functions has been a matter of concern and debate for Members and the public. Members may wish to form a Bills Committee to consider the Bill in detail.

II. REPORT

Objects of the Bill

- (a) to incorporate the existing Independent Police Complaints Council (“IPCC”) as a body corporate (“the proposed Council”);
- (b) to make provisions for the functions and powers of the proposed Council;
- (c) to make provisions for appointment of observers; and
- (d) to make provisions for connected matters.

LegCo Brief Reference

- 2. SBCR 1/2801/77 dated 27 June 2007 issued by the Security Bureau.

Date of First Reading

- 3. 11 July 2007.

Comments

4. The Bill proposes to incorporate the existing Independent Police Complaints Council (“IPCC”) as a body corporate to be known by the same name (clause 3). The proposed Council will consist of a Chairman, 3 Vice Chairmen and not less than 8 other members. All of the above persons are to be appointed by the Chief Executive. Civil servants or members of the police force are not eligible for appointment (clause 4). Under the Bill, the proposed Council is neither a servant nor an agent of the Government, and does not enjoy any status, immunity or privilege of the Government. The proposed Council must appoint a Secretary and a Legal Adviser, and may appoint such other employees to assist it in performing its functions (clause 5).

5. Under clause 41, the Chairman, Vice-Chairman, members and observers of the existing IPCC will continue to hold the same positions in the proposed Council for the unexpired term but are eligible for reappointment. Officers of the existing IPCC will also continue to hold the same positions in the proposed Council on the same terms and conditions. According to the LegCo Brief, the civil servants currently staffing the IPCC Secretariat will return to the Administration in phases.

6. The functions (as defined in clause 2, a function includes a power and a duty) of the proposed Council are specified in clause 7 of the Bill. The more notable ones are —

- (a) to observe, monitor and review the manner in which reportable complaints (defined in the Bill) are handled or investigated by the Commissioner of Police (“the Commissioner”), and to make recommendations to the Commissioner or the Chief Executive 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 the Commissioner or the Chief Executive of its opinion on such actions; and
- (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 to the Commissioner or the Chief Executive in respect of such practice or procedure.

7. Under the Bill, the proposed Council has various powers. These include —

- (a) to interview any person who is or may be able to provide information or other assistance to the Council for the purpose of considering a report (clause 19);
- (b) to require the Commissioner to provide any information or material relating to a reportable complaint and to clarify any fact or discrepancy (clause 20);
- (c) to require the Commissioner to investigate (whether or not there has been any previous investigation) a reportable complaint (clause 21);
- (d) a member of the proposed Council may at any time and without prior appointment attend an interview in respect of a reportable complaint and observe the collection of evidence (clause 23);
- (e) to 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 in connection with any reportable complaint (clause 24);and
- (f) to require the Commissioner to submit certain statistics and reports (clause 25).

Under the Bill, the Commissioner is required to comply with the said requirements unless he is satisfied that compliance would be likely to prejudice the security of Hong Kong or the investigation of any crime (clause 27).

8. If it considers appropriate or necessary, the proposed Council may submit its opinion or recommendation given to the Commissioner to the Chief Executive (clause 18(2)), or make such reports to the Chief Executive as it thinks necessary (clause 28).

9. Part 4 of the Bill makes provisions for the Observers Scheme. Under the Bill, observers are to be appointed by the Secretary for Security. Their function is to assist the Council to observe the manner in which reportable complaints are handled or investigated. An observer may at any time and without prior appointment attend an interview in respect of a reportable complaint, observe the collection of evidence, and submit a report to the proposed Council.

10. Schedule 1 to the Bill contains, inter alia, the financial and accounting requirements of the proposed Council. The resources of the proposed Council consist of all money paid by the Government to the Council and appropriated for that purpose by the Legislative Council, and all other money and property received by the Council. In each financial year, the proposed Council is required to submit to the Chief Executive certain financial reports, and to table them in the Legislative Council after receiving the Chief Executive's approval for tabling. The proposed Council will be subject to the examination of the Director of Audit.

Public Consultation

11. According to the LegCo Brief, the Administration conducted a public consultation exercise in March and April 2002 on the proposal to convert the existing IPCC into a statutory body. The majority of the respondents supported the proposal. As to investigative powers, some supported maintaining the status quo of the Police continuing to conduct investigations into complaints. Others supported conferring investigative powers on the proposed Council. There were also comments on the operation of the existing Council and the Observers Scheme.

Consultation with LegCo Panel

12. The Panel on Security was briefed by the Administration on 2 May and 10 July 2002 respectively on the progress and the results of the public consultation exercise to establish the existing Council as a statutory body. A more recent briefing was conducted at the meeting of the Panel on 6 June 2006 during which the Panel was briefed on the main legislative proposals.

13. Some members were of the view that the Complaints Against Police Office ("CAPO") should be independent of the Police, and that the proposed Council should be given investigative power. They considered that the proposed Council should at least be empowered to conduct independent investigations in its review of the CAPO's investigations, and to re-investigate more serious complaints. A member suggested that provisions be made for proposed Council observers to conduct surprise visits. Another member considered it important for the proposed Council to have an independent secretariat.

Conclusion

14. The status of the IPCC as well as its powers and functions have been a matter of concern and debate for Members and the public. Members may wish to form a Bills Committee to consider the Bill in detail.

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