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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