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Panel on Security

**Background brief prepared by the Legislative Council Secretariat
for the special meeting on 21 July 2010**

Operation of the statutory Independent Police Complaints Council

Purpose

This paper provides background information relating to the operation of the statutory Independent Police Complaints Council ("IPCC").

Background

Functions and powers of IPCC

2. The IPCC Ordinance was passed by the Legislative Council ("LegCo") 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

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- (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 confers upon IPCC 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. The IPCC Ordinance also empowers IPCC members and observers to attend any interviews to be conducted by the Police and to observe the collection of evidence undertaken by the Police in respect of reportable complaints, with or without prior appointment at their discretion. After conducting an observation, an observer must submit a report to IPCC stating his opinion on whether the Police has conducted the interview or collection of evidence in a fair and impartial manner, and stating any irregularities detected. The Observers Scheme reinforces the monitoring role of IPCC and ensures that the Police will investigate complaints thoroughly and impartially.

6. To ensure that the Observers Scheme can achieve the desired results, IPCC has, before the commencement of the IPCC Ordinance, issued internal guidelines to remind IPCC members and observers of the matters requiring special attention when performing their observation functions. In addition, the Police also arranges briefing sessions and visits to Police formations for IPCC members and observers from time to time so that they will have a deeper understanding of policing work. The Police also stipulates in its internal guidelines that all officers must make every effort to facilitate the work of IPCC members and observers, and provide the greatest possible convenience as far as practicable. In particular, the Police will, where possible, allow for a longer notification period for IPCC members and observers in respect of upcoming interviews or evidence collection.

Commencement of the IPCC Ordinance

7. Section 2 of the IPCC Ordinance provides that the statutory IPCC shall come into operation on a day to be appointed by the Secretary for Security ("S for S") by notice published in the Gazette. By the Independent Police Complaints Council Ordinance (Commencement) (No.2) Notice 2009 (L.N. 36 of 2009) ("the No.2 Commencement Notice"), S for S had appointed 1 June 2009 as the commencement date of the IPCC Ordinance.

Deliberations of the relevant committees

Bills Committee on Independent Police Complaints Council Bill

8. In the course of deliberations on the IPCC Bill, the Bills Committee noted that the IPCC Secretariat was reviewing the forms and procedures in connection with observers' visits (including whether and how such procedures were to be published) and would submit recommended improvements to IPCC for endorsement. A questionnaire survey to identify the reasons of observers not conducting surprise visits was being planned. Thereafter, the IPCC Secretariat would map out appropriate measures to facilitate surprise visits to be conducted by observers for consideration by IPCC. At the request of the Bills Committee, the IPCC Secretariat had agreed to revert to the Panel on Security ("the Panel") the guidelines for observers, the improved forms for completion by an observer after an observation had been conducted, as well as detailed statistics of visits conducted by observers one year after the enactment of the Bill.

9. In examining the Disciplinary and Criminal Checklist prepared by CAPO for submission to IPCC, members were concerned that there was a lack of sufficient information about the cases referred to in the Checklist and a lack of clarity in the matters to be endorsed by IPCC. The Police and the IPCC Secretariat were requested to jointly consider improving the presentation and contents of the Checklist and revert to the Panel on the improved version of the Disciplinary and Criminal Checklist.

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

10. During the scrutiny of the No.2 Commencement Notice, members of the Subcommittee expressed concern about the staffing and financial situation of the statutory IPCC. They stressed the importance for the statutory IPCC to be provided with sufficient manpower resources to enable it to effectively discharge its functions under the Ordinance.

11. IPCC explained that as at 31 March 2009, its Secretariat had a total of 25 staff for the performance of required functions and duties of IPCC. This comprised 21 civil servants and four non-civil service contract ("NCSC") staff employed to meet on-going service needs, but excluded four NCSC temporary staff for undertaking the

one-off preparatory work to facilitate the smooth transition of IPCC into a statutory body. Subject to the approval of the 2009-2010 estimates, IPCC would seek to fill three additional senior appointments, namely, the equivalent of two Senior Executive Officer posts and another Executive Officer I post, in 2010 through open recruitment. The statutory IPCC would have a staffing complement of 28 staff. With the creation of three additional posts, an additional vetting team would be established to enhance the statutory IPCC's ability to speed up the processing of complaint cases and vetting of CAPO's investigation reports. IPCC advised that it would keep under review the staffing requirement in the light of operational experience. Where necessary, it would bid for additional resources.

12. The Administration also assured the Subcommittee that, as a statutory body, IPCC would have a high degree of flexibility and independence in managing its own finances. The financial provision for the statutory IPCC would 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 the statutory IPCC as the Controlling Officer who would have autonomy to deploy or redeploy resources allocated or savings generated for purposes and functions pertinent to the statutory IPCC subject to the relevant provision of the IPCC Ordinance.

13. The Administration stressed that it would advise the statutory IPCC annually of the time and manner in which the relevant Resource Allocation Exercise and Estimates of Expenditure were to be conducted/prepared. This would 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 would be subject to the established resource bidding procedures in the normal manner and would be considered at a high-level forum, with the personal participation of both the Chief Secretary for Administration and the Financial Secretary.

14. The Subcommittee requested the Administration and the IPCC Secretariat to update the Panel on the staffing and financial situation of the statutory IPCC one year after the commencement of the Ordinance.

15. In response to the suggestion of the Subcommittee that IPCC members and observers should conduct more surprise observations without alerting CAPO in advance, IPCC explained that there were sometimes practical difficulties in conducting a surprise observation without alerting the complaint investigator/conciliating officer in advance, such as the need for arranging parking in advance and the need for an observer to arrive half an hour earlier to study background information, which was voluminous and thus could not be provided to an observer in advance, on a case. Nevertheless, IPCC stressed that improvement had been and would continue to be made to the Observers Scheme. For example, consideration was being given by IPCC to requesting all observers to spare themselves one or two whole days free for attending observations each year.

16. Notwithstanding the response of IPCC, the Subcommittee considered that arrangements should be made by the Police and the IPCC Secretariat to facilitate the

conduct of surprise observations without alerting CAPO, or at least the complaint investigator/conciliating officer, in advance. The Subcommittee requested the Police and the IPCC Secretariat to jointly consider improving the administrative arrangements for surprise observations conducted by IPCC members and observers and revert to the Panel one year after the commencement of the Ordinance.

Subcommittee on Police's Handling of Sex Workers and Searches of Detainees

17. The Subcommittee on Police's Handling of Sex Workers and Searches of Detainees noted that some sex worker concern groups had requested meeting with IPCC on a regular basis to reflect their concerns about the handling of complaints by CAPO. Knowing that IPCC had tentatively scheduled to receive the views of the sex worker concern groups in early December 2009, and that the Administration would report to the Panel the operation of IPCC one year after the latter became a statutory body, the Subcommittee recommended that the statutory IPCC's monitoring of the work of CAPO in handling complaints from sex workers be followed up by the Panel when it discussed the operation of the statutory IPCC.

Relevant papers

18. Members may wish to refer to the following papers for details of the deliberations of various committees -

- (a) Report of the Bills Committee on Independent Police Complaints Council Bill to the Legislative Council on 9 July 2008 (LC Paper No. CB(2)2499/07-08);
- (b) Report of the Subcommittee on Independent Police Complaints Council Ordinance (Commencement) (No. 2) Notice 2009 to the House Committee meeting on 17 April 2009 (LC Paper No. CB(2)1321/08-09); and
- (c) Report of the Subcommittee on Police's Handling of Sex Workers and Searches of Detainees (LC Paper No. CB(2)310/09-10).

19. The above reports are available on the LegCo website (<http://www.legco.gov.hk>).