

CONSULTATION PAPER ON INDEPENDENT POLICE COMPLAINTS COUNCIL BILL

PURPOSE

The Administration plans to introduce the Independent Police Complaints Council (IPCC) Bill to provide a statutory basis for the IPCC and define its functions and powers in law. The objective is to enhance the credibility and transparency of the existing police complaints system. Views of members of the public are invited on the legislative proposal.

BACKGROUND

The IPCC

2. The IPCC is an independent body responsible for monitoring and reviewing investigations by the Complaints Against Police Office (CAPO) of the Hong Kong Police Force (HKPF) into public complaints against the Police.

3. Complaints by the public against the Police, including civilian members of the Police Force, have been investigated by the CAPO since 1974. In 1977, the then Governor appointed the then Unofficial Members of the Executive and Legislative Councils Police Group (UPG), which was a non-statutory body, to oversee the work of CAPO.

4. The substantial growth in the number of complaints by 1984 highlighted the need for the strengthening and enhancement of this monitoring machinery. The Administration announced, in late 1985, the reconstitution of the UPG into a new non-statutory body – the Police Complaints Committee (PCC). The UPG was formally dissolved and the PCC set up in January 1986. The PCC was subsequently re-named as the IPCC in December 1994.

5. At present, the IPCC is made up of members of the community appointed by the Chief Executive, including a Chairman, three Vice-Chairmen and 14 non-official members. The Ombudsman or his representative is an ex officio member. Fifty-nine Lay Observers, who are either retired IPCC

members or other community personnel, have also been appointed by the Secretary for Security to observe the manner in which complaints are handled by the CAPO. The IPCC has its own full-time secretariat and legal adviser, and it operates as an independent body.

6. The IPCC's key functions are to monitor and review the investigations conducted by the CAPO of complaints made against the Police by the public. Its terms of reference are –

- (a) to monitor and, where it considers appropriate, to review the handling by the Police of complaints by the public;
- (b) to keep under review statistics of the types of conduct by police officers which lead to complaints by members of the public;
- (c) to identify any faults in police procedures which lead or might lead to complaints; and
- (d) where and when it considers appropriate, to make recommendations to the Commissioner of Police or, if necessary, to the Chief Executive.

The 1996 IPCC Bill

7. In October 1992, the Vice-Chairman of the then PCC recommended that the PCC should be made a statutory body so that its duties could be more clearly defined and its role better appreciated by the public at large. Following a Legislative Council (LegCo) Motion Debate in April 1993, the Administration decided to implement a range of proposals to improve the police complaints system. Making the PCC a statutory body was one of the proposals.

8. The Administration introduced the IPCC Bill to the then LegCo on 10 July 1996. The Bill was withdrawn by the Administration in June 1997 because a number of unacceptable Committee Stage Amendments (CSAs) were carried.

9. The Administration remained committed to improving the police complaints system and enhancing its credibility and transparency. Recommendations arising from the Report on the Independent Review of the Investigation Procedures of the CAPO and a comparative study of police complaints systems elsewhere carried out jointly by the IPCC, the then Security Branch and the Police were implemented. The recommendations included setting up a monitoring panel in the IPCC to select serious complaint cases for special monitoring, promoting transparency of IPCC's work, and opening part of IPCC meetings to the public.

The New IPCC Bill

10. As a further step to strengthen public confidence in the independence and impartiality of the IPCC, the Administration proposes a revised IPCC Bill to provide a statutory basis for the IPCC's operations. While the 1996 IPCC Bill is the basis of the new Bill, new clauses will be included, amongst other things, to enable the establishment of an independent secretariat for the IPCC and prescribe the Observers Scheme in clearer terms in law.

THE LEGISLATIVE PROPOSAL

11. The legislative proposal seeks to reflect the existing mode of operation of the IPCC in the new Bill. Essential elements are summarized in the ensuing paragraphs.

Definition of Complaints

12. Complaints in respect of the following matters will fall within the definition of complaint in the new Bill -

- (a) the conduct of any member of the police force whilst on duty, or in the execution or purported execution of his duties;

- (b) the conduct of any member of the police force when he is off duty but has revealed his police identity; and
- (c) any practice or procedure adopted by the police force.

Complaints may be made by an aggrieved person, including any person who is not in an official capacity as a member of the police force. Anonymous complaints will however be excluded.

13. Also to be excluded from the Bill are complaints lodged by someone who claims to be the subject of unjust or unfair action for an alleged contravention of any road traffic related Ordinance or any Ordinance which carries a fixed penalty. Such complaints are dealt with by mechanisms other than the police complaints system. They normally relate to the differences in judgement between the Police officer and the complainant. However, if the complaint is about misconduct of a Police officer when enforcing Ordinances in relation to road traffic or issuing fixed penalty tickets, the case will be investigated by the CAPO and subject to the scrutiny of the IPCC.

Membership

14. The Bill will state that the IPCC will consist of a Chairman, three Vice-Chairmen and not less than eight other members. They will be appointed by the Chief Executive for a term of two years. The Ombudsman or his representative will be an ex officio member. Member of Hong Kong Police Force should not be appointed to the IPCC.

15. Members may be re-appointed by the Chief Executive when a term expires, and may resign during a term of office. If the Chairman, Vice-Chairman or member cannot exercise his functions because of illness or absence from Hong Kong; or if the office of any one of them is vacant pending a new appointment or re-appointment, the Chief Executive may appoint another person to act in his place. The Chairman, Vice-Chairman or member may be removed by the Chief Executive due to permanent incapacity or other sufficient cause. The IPCC may also pay its non-official members such fees and allowances as the Secretary for Security, after consulting with the Secretary for the Treasury, determines.

Meetings

16. It is proposed that the new Bill will also provide for procedural matters about the meetings of the IPCC. Five members or one-third of the number of members, whichever is the less, shall form a quorum.

17. Every question shall be determined by a majority of votes. If there is an equality of votes, the member presiding shall have a casting vote on top of his ordinary vote. The IPCC will be able to transact its business by circulation of papers. A resolution signed by a majority of members shall be as valid and effectual as if it had been passed at a meeting. However, if two or more members notify the Secretary in writing that the papers should be discussed at a meeting, the resolution will not be valid and effectual.

18. The IPCC will also be able to appoint committees and delegate any of its functions or powers under the Bill to its committees, the Secretary or other staff of the Secretariat.

Appointment of Secretary and Legal Adviser

19. The IPCC will be able to appoint a Secretary and a Legal Adviser. The IPCC may delegate to the Secretary such authority as may from time to time be required.

20. The Administration also proposes to empower the IPCC to appoint technical, professional or other persons to serve on the Secretariat. To ensure continuity, the IPCC may still be served by civil servants after the passage of the Bill. When it is ready to employ its own staff, the relevant provision will be commenced by notice in the Gazette.

21. The salaries and terms and conditions of appointment of the Secretary, Legal Adviser and the various persons appointed to the Secretariat should be approved by the Chief Executive.

Financial arrangements

22. A new clause will be added to provide that the expenses of the IPCC and any salary or benefit payable to its employees shall be paid out of moneys appropriated for the purpose by LegCo.

23. Standard provisions on accounts and audit will also be included. The IPCC will be required to keep proper accounts and prepare a statement of the accounts including an income and expenditure account and a balance sheet. It shall also appoint an auditor who shall audit the required accounts and the required statement of accounts and submit a report on the statement to the IPCC. The IPCC shall then furnish a copy of the statement of accounts and the auditor's report on the statement to the Chief Executive. The Chief Executive shall cause the same to be tabled in the LegCo. In practice, such statement and auditor's report on the statement may be included as part of the annual report that the IPCC makes to the Chief Executive.

Director of Audit's examination

24. Standard clauses will be included to provide that the Director of Audit may conduct an examination into the economy, efficiency and effectiveness with which the IPCC has expended its resources in performing its functions and exercising its powers.

Functions

25. It is proposed that the following functions of the IPCC be stipulated in the new Bill –

- (a) to monitor and review the manner in which complaints are handled by the police force;
- (b) to review the findings of the police force's investigation of complaints;

- (c) to keep under review statistics compiled by the Police on the types of conduct that lead to complaints;
- (d) to identify any faults or deficiencies in the procedures adopted by the police force which lead to or might lead to complaints;
- (e) to make recommendations to the Commissioner of Police, or if the IPCC considers appropriate, to the Chief Executive regarding the handling and investigation of any complaint;
- (f) to consider whether the findings and the results of any investigation of a complaint, or action taken or to be taken by the Commissioner of Police are acceptable, and advise the Commissioner of Police of its view, or if it considers appropriate, advise the Chief Executive; and
- (g) to keep in view checklists from the Police on the gist of “non-reportable complaints”.

26. At the committee stage of the 1996 Bill, a CSA was moved to empower the IPCC to determine whether the findings and the results of the Police’s investigation of a complaint is acceptable, to make its findings and results, and to advise the Commissioner of Police or the Chief Executive on the action taken or to be taken in connection with that complaint. The CSA was unacceptable by the Administration because it might create two different sets of findings and results in respect of a complaint, and cause confusion. It also deviated from the established practice that the IPCC and the CAPO came to a consensus on the classification of a complaint. After due consideration, the Administration now proposes a more practical alternative as set out in point (f) above, which will enable the IPCC to advise the Commissioner of Police, and if it considers appropriate, the Chief Executive of its views on the relevant matters. In any case, if the IPCC is not satisfied with an investigation, it can ask the CAPO to re-investigate the complaint, or make a report to the Chief Executive.

Powers

27. The proposed Bill will stipulate the following powers of the IPCC –
- (a) to require the Police to submit a report on any complaint; provide any relevant information, file, document or material, including written statements taken from the interviewees during the interviews by CAPO and videotapes of such interviews; or clarify any fact or discrepancy;
 - (b) to require the Police to investigate or re-investigate any complaint or any matter relating to a complaint;
 - (c) to interview any witness for the purpose of exercising its statutory functions;
 - (d) to require the Police to provide an explanation on any action that has been taken by the police force arising out of a complaint;
 - (e) to require the Police to notify the complainant of the findings and the results of the investigation of his complaint;
 - (f) to require the Police to submit a report on actions taken in respect of the IPCC's recommendations on the handling and investigation of any complaint;
 - (g) to require the Police to compile and submit statistics of the types of conduct that lead to complaints;
 - (h) to monitor, review or report on any action taken by the police force in respect of a complaint;
 - (i) to require that it be consulted by the Police on significant amendments to be made, regarding the handling or investigation of complaints, to the Police General Orders, Headquarters Orders, Force Procedures Manual, and CAPO Manual, and may make relevant recommendations;

- (j) to enter into any contract; and
- (k) to do all such other acts as are reasonably necessary for the exercise or performance of its statutory powers or duties, or do any other thing which is incidental or conducive to the exercise of its functions.

28. The Commissioner of Police will have to comply with the requirement under (a), (b), (d), (e), (f), (g) and (i) unless he is satisfied that compliance with the requirement would likely prejudice the security of Hong Kong or the investigation of any crime.

29. At the committee stage of the 1996 Bill, a CSA was moved to empower the IPCC to investigate any complaint where it was not satisfied with an investigation report submitted, and to require the Commissioner of Police to assist in its investigation. This CSA was unacceptable because it would lead to confusion about the role of the IPCC as a monitoring body. Moreover, there were strong doubts on the feasibility and cost-effectiveness of such a proposal. First of all, the IPCC would not have any investigation powers similar to those of the Police such as the search and seizure powers. Secondly, it would have to set up its own investigation team. Civilians who were likely to lack the necessary professional expertise, if assigned to conduct investigation, would unlikely be able to produce satisfactory results. Thirdly, the work of the investigation team would duplicate with the CAPO's work, and there could hardly be sufficient workload to justify the existence of the team.

Observers Scheme

30. At the committee stage of the 1996 Bill, a CSA was moved to provide that the IPCC could for the purpose of monitoring, engage such persons as it considered fit to observe the manner in which a complaint was handled by the police force. To better reflect the existing IPCC Observers Scheme, we will stipulate the following details in the Bill –

- (a) Secretary for Security may appoint, for a term of two years, such persons as she thinks fit to observe the manner in which a complaint is handled by the police force. The person so

appointed should not be a Government official or a member of the IPCC Secretariat ;

- (b) an IPCC Observer may resign his office by notice in writing to Secretary for Security;
- (c) if an Observer is precluded by illness, absence from Hong Kong or any other cause from exercising his functions, Secretary for Security may terminate the appointment;
- (d) the Observers may attend interviews or investigations in relation to complaints by the police force on a scheduled or surprise basis;
- (e) complainants, complainees and witnesses shall accept the presence of Observers during such interviews and investigations by the police force;
- (f) Observers shall not interfere with the conduct of interview or investigation by the police force. They are not allowed to pose questions to the interviewer or interviewee, or express any personal views, while the interview or investigation is in progress;
- (g) Observers may release information acquired in the course of observations to the IPCC only; and
- (h) IPCC may pay to IPCC Observers such fees and allowances as the Secretary for Security, after consulting with the Secretary for the Treasury, determines.

Procedure and review

31. The new Bill will provide for procedural matters such as submission of investigation reports by the Police to the IPCC. The IPCC may also request the Commissioner of Police to submit an interim report on the progress of investigation within six months from the date of the request and advise the Commissioner of Police in writing in relation to any matter referred to in that report.

32. The Administration also proposes to add a new clause to the effect that after a complainant has been notified of the results of the Police's investigation of his complaint, he may, within 30 days, request a review of the complaint. A second request for review will only be considered in exceptional circumstances. Refusal to review should be recommended by a directorate police officer with detailed justifications for the endorsement of the IPCC.

Interview with witness

33. The Administration proposes to stipulate in the Bill that upon receipt of an investigation report from the Police, the IPCC or its members may interview any witness in connection with the complaint. In the case of interim report, the IPCC or its members may also interview any witness with the consent of the Commissioner of Police. The Commissioner must give the consent unless he opines that such interview would likely prejudice the investigation of any crime or complaint.

Secrecy

34. In the new Bill, members of the IPCC and Observers will be required to maintain secrecy in respect of all matters arising from any complaint and coming to their knowledge in the exercise of their functions. However, such requirement should not be applied to prevent any member or Observer from –

- (a) disclosing in the course of any criminal, civil or disciplinary proceedings in respect of which a complaint is relevant, any matter relevant to those proceedings;
- (b) reporting evidence of any crime to such authority as he considers appropriate;
- (c) disclosing to a person any matter arising from any complaint which, in the opinion of the member, may be ground for a complaint by that person.

35. The provision will also stipulate that the IPCC may disclose in its report any matter which ought to be disclosed in order to establish grounds for its conclusions and recommendations. However, the IPCC cannot disclose such matter which the Chief Executive certifies that its disclosure might prejudice security, defence or international relations (including relations with any international organization) in respect of Hong Kong or would otherwise be contrary to the public interest.

36. The IPCC may also disclose the details of complaints during the open part of its meetings, and in the information issued to the media and the public for education and publicity purposes. However, such disclosure shall not be in a manner that the identity of any person aggrieved, any complainant, any Police officer whose action is the subject of the investigation or who is otherwise involved in the investigation can be ascertained from the disclosure.

Protection to members

37. It is proposed that an IPCC member or Observer shall have such and the like protection and privileges in case of any action or suit brought against him for any act done or omitted to be done in the execution of his duty as is by law given to any magistrate acting in the execution of his office.

38. A clause will also be included to the effect that for the purposes of the law of defamation, absolute privilege shall be attached to the discussion in meetings and the publication of reports on individual complaint cases. No IPCC member, Observer, its committee or Secretariat staff shall be personally liable for any act done or default made by the IPCC or its committee acting in good faith in its course of the operations.

Report

39. The IPCC shall in each year make a general report to the Chief Executive concerning the exercise of its statutory functions during the previous year. Besides, it may make other reports to the Chief Executive as it deems necessary. The Chief Executive shall cause the annual report from the IPCC to be laid before LegCo.

Power to make regulations

40. The IPCC will be empowered to make regulation in consultation with the Chief Executive. Regulations made may provide for the discharge of its statutory functions and duties; the IPCC being assisted by such other persons and classes of persons as may be prescribed, in the exercise and performance of its functions and duties; any other matters required by or under the Bill; and generally the carrying out of the provisions of the Bill so long as any regulation made does not contravene the generality of those powers and functions given to the IPCC under the Bill.

Time limit

41. A new clause will be added to stipulate that the Police shall not normally undertake or continue an investigation into a non sub-judice complaint if it is not made within 24 months from the date of incident. The Police shall not normally undertake or continue an investigation into a sub-judice complaint if it is not made within 12 months from the date of conclusion of proceedings or 24 months from the date of incident, whichever represents a longer period. The Police may undertake or continue an investigation of a complaint lodged beyond the above time limits if the IPCC recommends it to do so in the case of complaints of a serious nature.

Complaints not made in good faith

42. A clause will be added to enable the Commissioner of Police to decide not to undertake or continue an investigation into a complaint, if he is of the opinion, having regard to all the circumstances of the case, that the complaint is frivolous or vexatious or is not made in good faith.

PUBLIC CONSULTATION

43. We welcome the views of the public on the legislative proposals set out in paras 12 to 42 above.

44. Please forward your views and comments to us **on or before 12 April 2002** at –

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