

立法會

Legislative Council

LC Paper No. LS92/05-06

Paper for the Bills Committee on Interception of Communications and Surveillance Bill

Amendments to the Chinese Text of the Bill

The Legal Service Division has completed scrutiny of the Chinese text of the Interception of Communications and Surveillance Bill and has agreed with the Administration on textual amendments in clauses 2 (definitions of “judicial authorization”, “executive authorization”, “interception”, “emergency authorization”, “examination” and “device retrieval warrant”) and 56. A marked-up copy of the agreed amendments is attached at **Annex I** for members' information. The Administration is also proposing amendments to the English text of clauses 2 (definitions of “copy”, “judicial authorization”, “head” and “communication transmitted by a postal service”) and 58 and has agreed to address our comments on the Chinese text at **Annex II** when preparing the Committee Stage Amendments. These amendments would be put into the usual format and included in the Committee Stage Amendments to be proposed by the Administration. With these Amendments, the drafting aspect of the Chinese text of the Bill is in order.

2. The Administration is in the process of finalizing the Committee Stage Amendments proposed in meetings of the Bills Committee during clause-by-clause examination. The Chinese version of these Committee Stage Amendments would be scrutinized when their English version is finalized.

Encl

Prepared by

Legal Service Division
Legislative Council Secretariat
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Bill/B/8/05-06

第 2 條

△所需 “司法授權”(judicial authorization) 指根據第 3 部第 2 分部發出或續期的司法授權，而凡文意有此要求，亦包括將會根據該分部發出或續期的司法授權；

☆所需 “行政授權”(executive authorization) 指根據第 3 部第 3 分部發出或續期的行政授權，而凡文意有此要求，亦包括將會根據該分部發出或續期的行政授權；

“截取”(interception)——

- (a) 就任何通訊而言，指就該通訊而進行任何截取作為；或
- (b) 如並無沒有特定提述任何通訊的文意中，指就通訊而進行任何截取作為；
出現

“緊急授權”(emergency authorization) 指根據第 3 部第 4 分部發出的緊急授權，而凡文意有此要求，亦包括將會根據該分部發出的緊急授權；
所需

☆所需 “審查”(examination) 指根據第 4 部第 3 分部進行的審查(包括考慮尋求審查的申請)，而凡文意有此要求，亦包括將會根據該分部進行的該等審查；

☆所需 “器材取出手令”(device retrieval warrant) 指根據第 33 條發出的器材取出手令，而凡文意有此要求，亦包括將會根據該條發出的器材取出手令；

“judicial authorization” (司法授權) means a judicial authorization issued or renewed under Division 2 of Part 3 (and, where the context requires, includes a judicial authorization to be issued or renewed under that Division);

“executive authorization” (行政授權) means an executive authorization issued or renewed under Division 3 of Part 3 (and, where the context requires, includes an executive authorization to be issued or renewed under that Division);

“interception” (截取)——

- (a) in relation to any communication, means the carrying out of any intercepting act in respect of the communication; or
- (b) when appearing in a context with no specific reference to any communication, means the carrying out of any intercepting act in respect of communications;

“emergency authorization” (緊急授權) means an emergency authorization issued under Division 4 of Part 3 (and, where the context requires, includes an emergency authorization to be issued under that Division);

“examination” (審查) means an examination (including consideration of the application for the examination) carried out under Division 3 of Part 4 (and, where the context requires, includes such an examination to be carried out under that Division);

“device retrieval warrant” (器材取出手令) means a device retrieval warrant issued under section 33 (and, where the context requires, includes a device retrieval warrant to be issued under that section);

56. 對受保護成果的保障

(1) 凡訂明授權因應部門的任何人員提出的申請而根據本條例發出或續期，而任何受保護成果依據該授權而被取得，該部門的首長須作出安排，以確保——

(a) 以下事宜被限制於對該訂明授權的有關目的屬必要的最小限度——

- (i) 受保護成果的披露範圍；
- (ii) 屬受保護成果披露對象的人的數目；
- (iii) 受保護成果被複製的程度；及
- (iv) 以任何受保護成果製成的文本的數目；

(b) 已採取所有切實可行步驟，以確保受保護成果已獲保護而不會在未經授權下或在意外的情況下被取用、處理、刪除或用作其他用途；及

(c) 在保留受保護成果並非對訂明授權的有關目的屬必要時，盡快銷毀該等成果。

(2) 就本條而言，在以下情況下，某事宜即屬對訂明授權的有關目的屬必要——

(a) 該事宜繼續是或相當可能變為是對該有關目的屬必要的；或

(b) ~~除對電訊截取的訂明授權的個案外，~~就於任何法院進行的待決民事或刑事法律程序而言，或就相當可能會在任何法院提起的民事或刑事法律程序而言，該事宜屬必要。

57. 備存紀錄

(1) 在不損害第 56 條的原則下，每一部門均須備存一份紀錄，該紀錄須——

(a) 就每項由該部門的任何人員提出的尋求根據本條例發出訂明授權或將訂明授權續期的申請，載有以下事宜的紀錄——

(i) 該申請（包括為該申請的目的而根據第 3 部提供的任何誓章或陳述的文本）；及

(ii) 有關當局就該申請作出的決定（包括因應該申請而根據第 3 部發出或續期的任何訂明授權的文本）；

56. Safeguards for protected products

(1) Where any protected product has been obtained pursuant to any prescribed authorization issued or renewed under this Ordinance on an application by any officer of a department, the head of the department shall make arrangements to ensure—

(a) that the following are limited to the minimum that is necessary for the relevant purpose of the prescribed authorization—

(i) the extent to which the protected product is disclosed;

(ii) the number of persons to whom any of the protected product is disclosed;

(iii) the extent to which the protected product is copied; and

(iv) the number of copies made of any of the protected product;

(b) that all practicable steps are taken to ensure that the protected product is protected against unauthorized or accidental access, processing, erasure or other use; and

(c) that the protected product is destroyed as soon as its retention is not necessary for the relevant purpose of the prescribed authorization.

(2) For the purposes of this section, something is necessary for the relevant purpose of a prescribed authorization if—

(a) it continues to be, or is likely to become, necessary for the relevant purpose; or

(b) except in the case of a prescribed authorization for a telecommunications interception, it is necessary for the purposes of any civil or criminal proceedings before any court that are pending or are likely to be instituted.

57. Record keeping

(1) Without prejudice to section 56, each department shall keep a record which is to contain—

(a) in respect of each application for the issue or renewal of a prescribed authorization under this Ordinance by any officer of the department, a record of—

(i) the application (including a copy of any affidavit or statement provided under Part 3 for the purposes of the application); and

(ii) the determination in respect of the application by the relevant authority (including a copy of any prescribed authorization issued or renewed under Part 3 as a result of the application);

“文本”(copy)——

- (a) 就依據對截取的訂明授權取得的通訊的任何內容而言，指任何以下項目（不論是否屬文件形式）——
- (i) 標明本身是該等內容的文本、複本、副本、拷貝、摘錄或撮錄的該等內容的任何文本、複本、副本、拷貝、摘錄或撮錄；
 - (ii) 提述該截取並且是屬該通訊的傳送人或傳送對象的人的身分的紀錄的任何紀錄；或
- (b) 就依據對秘密監察的訂明授權取得的任何材料而言，指任何以下項目（不論是否屬文件形式）——
- (i) 標明本身是該等材料的文本、複本、副本、拷貝、摘錄或撮錄的該等材料的任何文本、複本、副本、拷貝、摘錄或撮錄；
 - (ii) 標明本身是以該等材料製備的謄本或紀錄的以該等材料製備的任何謄本或紀錄；

"標明" is only one of the ways of identifying. Would
"識別" (s. 23 of Cap. 41) or "辨識" (Order 24 Rule 5(1),
Cap 4A) be more accurate?

“司法授權”(judicial authorization) 指根據第3部第2分部發出或續期的司法授權，而凡文意有此要求，亦包括將會根據該分部發出或續期的司法授權；

小組法官

“首長”(head) 就某部門而言，包括該部門的任何副首長；

inconsistent with the English text

“藉郵政服務傳送的通訊”(communication transmitted by a postal service) 包括郵件；

"postal article" is rendered as "郵遞品" in Post
Office Ordinance (Cap 98) with a specific meaning.

“copy”(文本)——

- (a) in relation to any contents of a communication that have been obtained pursuant to a prescribed authorization for interception, means any of the following (whether or not in documentary form)——
- (i) any copy, extract or summary of such contents which identifies itself as such copy, extract or summary of such contents;
 - (ii) any record referring to the interception which is a record of the identity of any person who is the sender or intended recipient of the communication; or
- (b) in relation to any material that has been obtained pursuant to a prescribed authorization for covert surveillance, means any of the following (whether or not in documentary form)——
- (i) any copy, extract or summary of the material which identifies itself as such copy, extract or summary of the material;
 - (ii) any transcript or record made of the material which identifies itself as such transcript or record made of the material;

“judicial authorization”(司法授權) means a judicial authorization issued or renewed under Division 2 of Part 3 (and, where the context requires, includes a judicial authorization to be issued or renewed under that Division);

“head”(首長), in relation to a department, includes any deputy of the head of the department;

“communication transmitted by a postal service”(藉郵政服務傳送的通訊) includes a postal article;

58. 電訊截取成果不獲接納為證據

(1) 任何電訊截取成果不得於在任何法院進行的任何法律程序中獲接納為證據，但用作證明有人已犯某有關罪行則除外。

(2) 任何電訊截取成果以及關於依據有關訂明授權進行的電訊截取的任何詳情，不得提供予在任何法院進行的任何法律程序（就有關罪行提起的任何該等法律程序除外）中的任何一方。

(3) 於在任何法院進行的任何法律程序（就有關罪行提起的任何該等法律程序除外）中，不可舉出任何傾向顯示以下任何事宜的任何證據，亦不可發問任何傾向顯示以下任何事宜的任何問題——

- (a) 有人已提出申請，尋求根據本條例發出有關訂明授權或將有關訂明授權續期，或尋求根據本條例發出有關器材取出手令；
 - (b) 已根據本條例發出有關訂明授權或將有關訂明授權續期，或已根據本條例發出有關器材取出手令；
 - (c) 已對任何人施加規定，規定該人為執行有關訂明授權或有關器材取出手令而提供協助；
 - (d) 已依據有關訂明授權取得任何資料。
- (4) 本條不得解釋為禁止在以下範圍內披露任何繼續可供披露的資料——
- (a) 作出披露是為確保進行任何罪行的檢控的人，獲得他所需要的、用以斷定他在確保公平地就該罪行進行審訊方面的責任要求他有何作為的資料；或
 - (b) 披露是向某法官單獨作出的，而在有關個案中，該法官已命令須如此向他作出披露。

a) Would it be better to use "所需" instead of "要求"?

b) It is unclear from the English text that certain acts are required.

58. Non-admissibility of telecommunications interception product

(1) Any telecommunications interception product shall not be admissible in evidence in any proceedings before any court other than to prove that a relevant offence has been committed.

(2) Any telecommunications interception product, and any particulars as to a telecommunications interception carried out pursuant to a relevant prescribed authorization, shall not be made available to any party to any proceedings before any court (other than any such proceedings instituted for a relevant offence).

(3) In any proceedings before any court (other than any such proceedings instituted for a relevant offence), any evidence or question which tends to suggest any of the following matters shall not be adduced or asked—

- (a) that an application has been made for the issue or renewal of a relevant prescribed authorization, or the issue of a relevant device retrieval warrant, under this Ordinance;
- (b) that a relevant prescribed authorization has been issued or renewed, or a relevant device retrieval warrant has been issued, under this Ordinance;
- (c) that any requirement has been imposed on any person to provide assistance for the execution of a relevant prescribed authorization or a relevant device retrieval warrant;
- (d) that any information has been obtained pursuant to a relevant prescribed authorization.

(4) This section is not to be construed as prohibiting the disclosure of any information that continues to be available for disclosure, to the extent that—

- (a) the disclosure is made to ensure that a person conducting the prosecution of any offence has the information he needs to determine what is required of him by his duty to secure the fairness of the trial of that offence; or
- (b) the disclosure is made to a judge alone in a case in which the judge has ordered the disclosure to be so made to him.