

INTERCEPTION OF COMMUNICATIONS AND
SURVEILLANCE BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for Security

<u>Clause</u>	<u>Amendment Proposed</u>
2(1)	<p>(a) In the definition of “copy” –</p> <p>(i) in paragraph (a)(i), by deleting “which identifies itself as such copy, extract or summary of such contents”;</p> <p>(ii) in paragraph (a)(ii), by deleting “record of” and substituting “record showing, directly or indirectly,”;</p> <p>(iii) in paragraph (b)(i), by deleting “which identifies itself as such copy, extract or summary of the material”;</p> <p>(iv) in paragraph (b)(ii), by deleting “which identifies itself as such transcript or record made of the material”.</p> <p>(b) In the definition of “court”, by deleting “section 53 and section 4 of Schedule 2” and substituting “sections 6(3A) and 53”.</p> <p>(c) In the definition of “covert surveillance” –</p> <p>(i) in paragraph (a), by deleting “systematic”;</p> <p>(ii) by deleting paragraph (b) and substituting –</p> <p>“(b) does not include –</p> <p>(i) any spontaneous reaction to unforeseen events or circumstances;</p>

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and

- (ii) any such surveillance that constitutes interception under this Ordinance;”.
- (d) In the definition of “data surveillance device”, in paragraph (a), by adding “by electronic means” before “; but”.
- (e) In the definition of “head”, in the English text, by deleting “deputy of the” and substituting “deputy”.
- (f) In the definition of “interception” –
 - (i) in paragraph (a), by deleting “the communication” and substituting “that communication”;
 - (ii) in paragraph (b), by deleting “communications;” and substituting “any communication;”.
- (g) By deleting the definition of “judicial authorization” and substituting –

““judge’s authorization” (法官授權) means a judge’s authorization issued or renewed under Division 2 of Part 3 (and, where the context requires, includes a judge’s authorization to be issued or renewed under that Division);”.
- (h) In the definition of “maintain”, in paragraph (a), by deleting “relocate” and substituting “reposition”.
- (i) In the definition of “postal service”, by deleting everything after “means” and substituting “postal service to which the Post Office Ordinance (Cap. 98) applies;”.
- (j) In the definition of “public place”, in paragraph (b), by deleting “to the extent that they” and substituting “that”.
- (k) By deleting the definition of “transmitted”.

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- (l) In the definition of “Type 2 surveillance” –
- (i) by deleting “subsection (3), means any covert surveillance to the extent” and substituting “subsections (3) and (3A), means any covert surveillance”;
- (ii) by deleting paragraph (a) and substituting –
- “(a) is carried out with the use of a listening device or an optical surveillance device by any person for the purpose of listening to, monitoring or recording words spoken or activity carried out by any other person, if the person using the device –
- (i) is a person by whom the other person intends, or should reasonably expect, the words or activity to be heard or seen; or
- (ii) listens to, monitors or records the words or activity with the consent, express or implied, of a person described in subparagraph (i); or”;
- (iii) in paragraph (b), by deleting “it”;
- (iv) in paragraph (b), by deleting “and” and substituting “, if”;
- (v) in paragraph (b)(ii), by adding “, or electronic interference with the device,” after “object”.
- (m) In the definitions of “行政授權”, “緊急授權”, “審查” and “器材取出手令”, in the Chinese text, by deleting “有此要求” and substituting “所需”.
- (n) In the definition of “監聽器材”, in the Chinese text, by

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deleting paragraph (a) and substituting –

“(a) 指用以作出以下行為的任何器材：竊聽、監聽、監測或記錄任何談話或在談話中向任何人或由任何人所說的說話；但”。

(o) In the definition of “藉郵政服務傳送的通訊”, in the Chinese text, by deleting “郵件” and substituting “郵遞品”.

(p) By adding –

““journalistic material” (新聞材料) has the meaning assigned to it by section 82 of the Interpretation and General Clauses Ordinance (Cap. 1);

“postal article” (郵遞品) has the meaning assigned to it by section 2(1) of the Post Office Ordinance (Cap. 98);

“public security” (公共安全) means the public security of Hong Kong;”.

2(2) By adding “, but nothing in this subsection affects any such entitlement of the person in relation to words spoken, written or read by him in a public place” before the full stop.

2 By adding –

“(3A) An officer of a department may apply for the issue or renewal of a prescribed authorization for any Type 2 surveillance as if the Type 2 surveillance were Type 1 surveillance, and the provisions of this Ordinance relating to the application and the prescribed authorization apply to the Type 2 surveillance as if it were Type 1 surveillance.”.

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By adding –

“(5A) For the purposes of this Ordinance, advocacy, protest or dissent (whether in furtherance of a political or social objective or otherwise), unless likely to be carried on by violent means, is not of itself regarded as a threat to public security.”.

2(6)

- (a) In paragraph (a), by deleting “also regarded as being made orally if it is” and substituting “regarded as being made orally if it is made orally in person or”.
- (b) In paragraph (a), in the Chinese text, by deleting “亦”.
- (c) In paragraph (b), by deleting “also regarded as being provided orally if it is” and substituting “regarded as being provided orally if it is provided orally in person or”.
- (d) In paragraph (b), in the Chinese text, by deleting “亦”.
- (e) In paragraph (c), by deleting “also regarded as being delivered orally if it is” and substituting “regarded as being delivered orally if it is delivered orally in person or”.
- (f) In paragraph (c), in the Chinese text, by deleting “亦”.

2

By deleting subclause (7).

3(1)

- (a) In paragraph (a)(ii), by deleting “and”.
- (b) By adding –
 - “(aa) there is reasonable suspicion that any person has been, is, or is likely to be, involved in –
 - (i) where the purpose sought to be furthered

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by carrying out the interception or covert surveillance is that specified in paragraph (a)(i), the particular serious crime to be prevented or detected; or

(ii) where the purpose sought to be furthered by carrying out the interception or covert surveillance is that specified in paragraph (a)(ii), any activity which constitutes or would constitute the particular threat to public security; and”.

- (c) In paragraph (b), by deleting “proportionate to” and substituting “necessary for, and proportionate to,”.
- (d) In paragraph (b)(i), by deleting “, in operational terms,”.
- (e) In paragraph (b)(i), by deleting “and”.
- (f) In paragraph (b)(ii), by deleting the full stop and substituting “; and”.
- (g) In paragraph (b), by adding –
 - “(iii) considering such other matters that are relevant in the circumstances.”.

3(2) In paragraph (a)(i), by adding “particular” before “serious”.

4(1) By deleting “through any other person” and substituting “indirectly (whether through any other person or otherwise)”.

5(1) By deleting “through any other person” and substituting “indirectly (whether through any other person or otherwise)”.

6(2) By deleting “, and may from time to time be reappointed”.

6 By adding –

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“(3A) In performing any of his functions under this Ordinance, a panel judge –

- (a) is not regarded as a court or a member of a court; but
- (b) has the same powers, protection and immunities as a judge of the Court of First Instance has in relation to proceedings in that Court.”.

6 By adding –

“(4A) A person previously appointed as a panel judge may from time to time be further appointed as such in accordance with the provisions of this Ordinance that apply to the appointment of a panel judge.”.

8(2) In paragraph (b), by deleting everything after “specified in” and substituting “Part 1 or 2 of Schedule 3 (as may be applicable).”.

11(2) In paragraph (b)(ii), by deleting “a copy of any affidavit” and substituting “copies of all affidavits”.

12(2) By deleting everything after “unless” and substituting –

“–

- (a) he is satisfied that the conditions for the renewal under section 3 have been met; and
- (b) without limiting the generality of paragraph (a), he has taken into consideration the period for which the judge’s authorization has had effect since its first issue.”.

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- 17(2) In paragraph (b)(ii), by deleting “a copy of any statement” and substituting “copies of all statements”.
- 18(2) By deleting everything after “unless” and substituting –
 “_
- (a) he is satisfied that the conditions for the renewal under section 3 have been met; and
 - (b) without limiting the generality of paragraph (a), he has taken into consideration the period for which the executive authorization has had effect since its first issue.”.
- 20(1) (a) In the Chinese text, by deleting “權 —” and substituting “權：該人員認為 —”.
- (b) In paragraph (a), in the Chinese text, by deleting “該人員認為”.
- (c) In paragraph (b), in the Chinese text, by deleting “該人員”.
- (d) In paragraph (b), in the Chinese text, by deleting “後，認為” and substituting “下，”.
- 20(2) In paragraph (b)(ii), by deleting everything after “comply with” and substituting “the requirements specified in Part 1 or 2 of Schedule 3 (as may be applicable) which are to apply to the statement as they apply to an affidavit referred to in section 8(2)(b).”.

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- 22(1) In paragraph (b), by deleting “takes effect” and substituting “is issued”.
- 23(1) By deleting “takes effect” and substituting “is issued”.
- 23(3) (a) In the English text, by deleting “If no application for confirmation of the emergency authorization is made” and substituting “In default of any application being made for confirmation of the emergency authorization”.
- (b) In paragraph (a), by deleting everything after “concerned” and substituting “; and”.
- 24(3) (a) In paragraph (b), by deleting “any information obtained by carrying out the interception or Type 1 surveillance concerned, to the extent”.
- (b) In paragraph (b)(i), by deleting everything after the comma and substituting “any information obtained by carrying out the interception or Type 1 surveillance concerned; or”.
- (c) In paragraph (b)(ii), by adding “any information obtained by carrying out the interception or Type 1 surveillance concerned” after the comma.
- 26(1) By deleting “takes effect” and substituting “is issued or granted”.
- 26(3) (a) In the English text, by deleting “If no application for confirmation of the prescribed authorization or renewal is made” and substituting “In default of any application being made for confirmation of the prescribed authorization or renewal”.

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- (b) In paragraph (b)(i), by deleting everything after “concerned” and substituting “; and”.

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By adding –

“(4A) If, at the time of an application for confirmation of the prescribed authorization or renewal as provided for in subsection (1), the relevant authority is no longer holding his office or performing the relevant functions of his office –

- (a) without prejudice to section 54 of the Interpretation and General Clauses Ordinance (Cap. 1), the reference to relevant authority in that subsection includes the person for the time being appointed as a panel judge or authorizing officer (as the case may be) and lawfully performing the relevant functions of the office of that relevant authority; and
- (b) the provisions of this section and section 27 are to apply accordingly.”.

27(3)

- (a) In paragraph (b), by deleting “any information obtained by carrying out the interception or covert surveillance concerned, to the extent”.
- (b) In paragraph (b)(i), by deleting everything after the comma and substituting “any information obtained by carrying out the interception or covert surveillance concerned; or”.

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- (c) In paragraph (b)(ii), by adding “any information obtained by carrying out the interception or covert surveillance concerned” after the comma.
- 29(1) In paragraph (b)(ii), by deleting “likely” and substituting “reasonably expected”.
- 29(4) By adding “reasonably” before “necessary”.
- 29(5) By adding “reasonable” before “assistance”.
- 29(6) (a) In paragraph (b), by adding “the use of reasonable” before “force”.
- (b) By deleting paragraph (c) and substituting –
- “(c) the incidental interception of any communication which necessarily arises from the interception of communications authorized to be carried out under the prescribed authorization; and”.
- (c) In paragraph (d)(ii), by deleting “likely” and substituting “reasonably expected”.
- 29(7) (a) In paragraphs (a)(ii) and (b)(ii), by deleting “the entry, by” and substituting “in the case of Type 1 surveillance, the entry, by the use of reasonable”.
- (b) In paragraph (c)(i), in the English text, by deleting “authorization,” and substituting “authorization”.
- (c) In paragraph (c)(ii), by deleting “the entry, by” and substituting “in the case of Type 1 surveillance, the entry, by the use of reasonable”.
- 30 (a) In the heading, by deleting “further” and substituting

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“also”.

- (b) By deleting everything before the dash and substituting –
- “A prescribed authorization also authorizes the undertaking of conduct, including the following conduct, that is necessary for and incidental to the carrying out of what is authorized or required to be carried out under the prescribed authorization”.

New

By adding –

“30A. What a prescribed authorization may not authorize

(1) Notwithstanding anything in this

Ordinance, unless exceptional circumstances exist –

- (a) no prescribed authorization may contain terms that authorize the interception of communications by reference to –
- (i) in the case of a postal interception, an office or other relevant premises, or a residence, of a lawyer; or
- (ii) in the case of a telecommunications interception, any telecommunications service used at an office or other relevant premises, or a residence, of a lawyer, or any telecommunications service known or reasonably expected to be known by the

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applicant to be ordinarily used by a lawyer for the purpose of providing legal advice to clients; and

- (b) no prescribed authorization may contain terms that authorize any covert surveillance to be carried out in respect of oral or written communications taking place at an office or other relevant premises, or a residence, of a lawyer.

(2) For the purposes of subsection (1), exceptional circumstances exist if the relevant authority is satisfied that there are reasonable grounds to believe –

- (a) that –
- (i) the lawyer concerned;
 - (ii) in the case of an office or other relevant premises of the lawyer, any other lawyer practising with him or any other person working in the office; or
 - (iii) in the case of a residence of the lawyer, any other person residing in the residence, is a party to any activity which constitutes or would constitute a serious crime or a threat to public security; or
- (b) that any of the communications concerned is for the furtherance of a

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criminal purpose.

(3) For the avoidance of doubt, a prescribed authorization does not authorize any device to be implanted in, or administered to, a person without the consent of the person.

(4) In this section –

“lawyer” (律師) means a barrister, solicitor or foreign lawyer as defined in section 2(1) of the Legal Practitioners Ordinance (Cap. 159) who practises as such, or any person holding an appointment under section 3(1) of the Legal Aid Ordinance (Cap. 91);

“other relevant premises” (其他有關處所), in relation to a lawyer, means any premises, other than an office of the lawyer, that are known or reasonably expected to be known by the applicant to be ordinarily used by the lawyer and by other lawyers for the purpose of providing legal advice to clients (including any premises ordinarily used by lawyers for the purpose of providing legal advice to clients when in court or visiting a prison, police station or other place where any person is detained).”.

35(3) By adding “reasonably” before “necessary”.

36 In the heading, by deleting “further” and substituting “also”.

36(1) (a) By deleting everything before the dash and substituting –
 “(1) A device retrieval warrant also authorizes

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the undertaking of conduct, including the following conduct, that is necessary for and incidental to the carrying out of what is authorized to be carried out under the warrant”.

- (b) In paragraph (b), by adding “the use of reasonable” before “force”.

38(3) By deleting “, and may from time to time be reappointed”.

38 By adding –

“(5A) A person previously appointed as the Commissioner may from time to time be further appointed as such in accordance with the provisions of this Ordinance that apply to the appointment of the Commissioner.”.

39 In paragraph (b), by adding –

“(iia) give notifications to relevant persons under Division 3A;”.

40 By adding –

“(1A) Without limiting the generality of subsection (1), the Commissioner shall conduct reviews on cases in respect of which a report has been submitted to him under section 23(3)(b), 26(3)(b)(ii) or 52.”.

40(2) By adding “or (1A)” after “subsection (1)”.

41(2) By adding “(including any disciplinary action taken in respect of any officer)” before “to address”.

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- 41(3) By deleting everything after “Chief Executive” and substituting “, the Secretary for Justice or any panel judge or any or all of them.”.
- 42(1) (a) By deleting “believes” and substituting “suspects”.
(b) In paragraphs (a) and (b), by adding “an officer of” before “a department”.
- 43(1) In paragraph (b), by deleting everything after “whether or not” and substituting “the interception or covert surveillance alleged has been carried out by an officer of a department without the authority of a prescribed authorization.”.
- 43 By deleting subclause (2) and substituting –
- “(2) If, on an examination, the Commissioner, having regard to section 45(1), determines that the interception or covert surveillance alleged has been carried out by an officer of a department without the authority of a prescribed authorization, he shall as soon as reasonably practicable give notice to the applicant –
- (a) stating that he has found the case in the applicant’s favour and indicating whether the case is one of interception or covert surveillance and the duration of the interception or covert surveillance; and
- (b) inviting the applicant to confirm whether the applicant wishes to seek an order for the payment of compensation under the application, and if so, to make written

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submissions to him for that purpose.”.

43 By adding –

“(2A) Upon receiving confirmation from the applicant that an order for the payment of compensation is sought, the Commissioner, upon taking into account any written submissions made to him for that purpose, may make any order for the payment of compensation by the Government to the applicant.

(2B) The compensation ordered to be paid under subsection (2A) may include compensation for injury of feelings.”.

43(3) By adding “as soon as reasonably practicable” after “shall”.

43 By deleting subclause (4).

43 By deleting subclause (5) and substituting –

“(5) Notwithstanding subsections (2), (2A) and (3), the Commissioner shall only give a notice or make an order under those subsections when he considers that the giving of the notice or the making of the order (as the case may be) would not be prejudicial to the prevention or detection of crime or the protection of public security.”.

43 By adding –

“(6) The Commissioner shall not make a determination referred to in subsection (2) in respect of an interception if the interception is within the

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description of section 4(2)(b) or (c).”.

44(1) In paragraph (c), by adding “, after the use of reasonable efforts,” after “cannot”.

45 By deleting subclause (1) and substituting –

“(1) For the purposes of an examination –

- (a) in determining whether any interception or covert surveillance has been carried out without the authority of a prescribed authorization, the Commissioner shall apply the principles applicable by a court on an application for judicial review; and
- (b) without limiting the generality of paragraph (a), the Commissioner may by applying those principles determine that any interception or covert surveillance has been carried out without the authority of a prescribed authorization notwithstanding the purported issue or renewal of any prescribed authorization.”.

45 By adding –

“(1A) Subject to section 51(1), the Commissioner shall carry out an examination on the basis of written submissions made to him.”.

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- 45(3) (a) By deleting “under section 43(2)(a)” and substituting “or making any order under section 43(2), (2A)”.
- (b) In paragraph (b), by deleting “; and” and substituting “further to those mentioned in section 43(2)(a); or”.
- 46(1) (a) By deleting “under” and substituting “referred to in”.
- (b) By adding “, including any order or findings he has made in the examination” before the full stop.
- 46(2) (a) By deleting “notified of the determination” and substituting “given the notification”.
- (b) By adding “(including any disciplinary action taken in respect of any officer)” before “to address”.
- 46(3) By deleting everything after “Chief Executive” and substituting “, the Secretary for Justice or any panel judge or any or all of them.”.
- New By adding –

“Division 3A – Notifications by Commissioner

46A. Notifications to relevant persons

(1) If, in the course of performing any of his functions under this Ordinance, the Commissioner, having regard to subsection (5), considers that there is any case in which any interception or covert surveillance has been carried out by an officer of a department without the authority of a prescribed authorization, subject to subsection (6), the Commissioner shall as soon as reasonably practicable give notice to the relevant

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person –

- (a) stating that there has been such a case and indicating whether the case is one of interception or covert surveillance and the duration of the interception or covert surveillance; and
- (b) informing the relevant person of his right to apply to the Commissioner for an examination in respect of the interception or covert surveillance.

(2) Where the relevant person makes an application for an examination in respect of the interception or covert surveillance within 6 months after receipt of the notice or within such further period as the Commissioner may allow, the Commissioner shall, notwithstanding anything in section 44(1)(a) but subject to the other provisions of section 44, make a determination referred to in section 43(2), and the provisions of this Ordinance are to apply accordingly.

(3) Notwithstanding subsection (1), the Commissioner shall only give a notice under that subsection when he considers that the giving of the notice would not be prejudicial to the prevention or detection of crime or the protection of public security.

(4) Without prejudice to subsection (3), in giving notice to a relevant person under subsection (1), the Commissioner shall not –

- (a) give reasons for his findings; or
- (b) give details of any interception or covert surveillance concerned

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further to those mentioned in subsection (1)(a).

- (5) For the purposes of this section –
- (a) in considering whether any interception or covert surveillance has been carried out without the authority of a prescribed authorization, the Commissioner shall apply the principles applicable by a court on an application for judicial review; and
 - (b) without limiting the generality of paragraph (a), the Commissioner may by applying those principles determine that any interception or covert surveillance has been carried out without the authority of a prescribed authorization notwithstanding the purported issue or renewal of any prescribed authorization.
- (6) This section does not require the Commissioner to give any notice to a relevant person if –
- (a) the relevant person cannot, after the use of reasonable efforts, be identified or traced;
 - (b) the Commissioner considers that the intrusiveness of the interception or covert surveillance concerned on the relevant person is negligible; or
 - (c) in the case of interception, the

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interception is within the
description of section 4(2)(b) or (c).

(7) In this section, “relevant person” (有關人士) means any person who is the subject of the interception or covert surveillance concerned.”.

47(2)

- (a) By deleting paragraph (a) and substituting –
- “(a) . a list showing –
- (i) the respective numbers of judge’s authorizations, executive authorizations and emergency authorizations issued under this Ordinance during the report period, and the average duration of the respective prescribed authorizations;
 - (ii) the respective numbers of judge’s authorizations and executive authorizations renewed under this Ordinance during the report period, and the average duration of the respective renewals;
 - (iii) the respective numbers of judge’s authorizations, executive authorizations and emergency authorizations issued as a result of an oral application under this Ordinance during the report period, and the average duration of the respective prescribed authorizations;
 - (iv) the respective numbers of judge’s authorizations and executive authorizations renewed as a result of an oral application under this Ordinance during the report

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- period, and the average duration of the respective renewals;
- (v) the respective numbers of judge's authorizations and executive authorizations that have been renewed under this Ordinance during the report period further to 5 or more previous renewals;
 - (vi) the respective numbers of applications for the issue of judge's authorizations, executive authorizations and emergency authorizations made under this Ordinance that have been refused during the report period;
 - (vii) the respective numbers of applications for the renewal of judge's authorizations and executive authorizations made under this Ordinance that have been refused during the report period;
 - (viii) the respective numbers of oral applications for the issue of judge's authorizations, executive authorizations and emergency authorizations made under this Ordinance that have been refused during the report period; and
 - (ix) the respective numbers of oral applications for the renewal of judge's authorizations and executive authorizations made under this Ordinance that have been refused during the report period;”.
- (b) In paragraph (d)(ii), by adding “or errors” after “irregularities”.

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- (c) By deleting paragraph (d)(iv) and substituting –
- “(iv) the respective numbers of notices given by the Commissioner under section 43(2) and section 43(3) during the report period further to examinations;”.
- (d) In paragraph (d), by adding –
- “(iva) the number of cases in which a notice has been given by the Commissioner under section 46A during the report period;”.
- (e) In paragraph (d)(v), by adding “48,” before “49”.
- (f) In paragraph (d)(v), by deleting “and” at the end.
- (g) In paragraph (d), by adding –
- “(vi) the number of cases in which information subject to legal professional privilege has been obtained in consequence of any interception or covert surveillance carried out pursuant to a prescribed authorization during the report period; and
- (vii) the number of cases in which disciplinary action has been taken in respect of any officer of a department according to any report submitted to the Commissioner under section 41, 46, 50 or 52 during the report period, and the broad nature of such action; and”.

47

By deleting subclause (4) and substituting –

“(4) The Chief Executive shall cause to be laid on the table of the Legislative Council a copy of the report, together with a statement as to whether any matter has been excluded from that copy under subsection (5) without the agreement of the Commissioner.”.

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- 50(2) By adding “(including any disciplinary action taken in respect of any officer)” before “to implement”.
- 50(3) By deleting everything after “Chief Executive” and substituting “, the Secretary for Justice or any panel judge or any or all of them.”.
- 51 By adding –
“(1A) For the purpose of performing any of his functions under this Ordinance, the Commissioner may request a panel judge to provide him with access to any of the documents or records kept under section 3 of Schedule 2.”.
- 52 By adding “(including any disciplinary action taken in respect of any officer)” before the full stop.
- 55(1) By deleting everything before “ground” and substituting –
“(1) If the officer by whom any regular review is or has been conducted under section 54(1) or (2) is of the opinion that the”.
- 55(2) (a) In paragraph (a), in the English text, by deleting “any ground” and substituting “the ground”.
(b) In the Chinese text, by adding “有關部門” before “在當其時”.
(c) In the Chinese text, by deleting “有關部門的人員” and substituting “人員”.

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By adding –

“(5A) If, at the time of the provision of a report to the relevant authority under subsection (3), the relevant authority is no longer holding his office or performing the relevant functions of his office –

- (a) without prejudice to section 54 of the Interpretation and General Clauses Ordinance (Cap. 1), the reference to relevant authority in that subsection includes the person for the time being appointed as a panel judge or authorizing officer (as the case may be) and lawfully performing the relevant functions of the office of that relevant authority; and
- (b) the provisions of this section are to apply accordingly.”.

55

By deleting subclause (6) and substituting –

“(6) For the purposes of this section, the ground for discontinuance of a prescribed authorization exists if the conditions for the continuance of the prescribed authorization under section 3 are not met.”.

New

By adding –

“55A. Reports to relevant authorities following arrests

- (1) Where, further to the issue or renewal of a prescribed authorization under this Ordinance, the officer of the department concerned who is for the time

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being in charge of the interception or covert surveillance concerned becomes aware that the subject of the interception or covert surveillance has been arrested, the officer shall, as soon as reasonably practicable after he becomes aware of the matter, cause to be provided to the relevant authority by whom the prescribed authorization has been issued or renewed a report assessing the effect of the arrest on the likelihood that any information which may be subject to legal professional privilege will be obtained by continuing the interception or covert surveillance.

(2) Where the relevant authority receives a report under subsection (1), he shall revoke the prescribed authorization if he considers that the conditions for the continuance of the prescribed authorization under section 3 are not met.

(3) Where the prescribed authorization is revoked under subsection (2), the prescribed authorization is, notwithstanding the relevant duration provision, to cease to have effect from the time of the revocation.

(4) If, at the time of the provision of a report to the relevant authority under subsection (1), the relevant authority is no longer holding his office or performing the relevant functions of his office –

(a) without prejudice to section 54 of the Interpretation and General Clauses Ordinance (Cap. 1), the reference to relevant authority in that subsection includes the person for the time being appointed as a

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panel judge or authorizing officer
(as the case may be) and lawfully
performing the relevant functions of
the office of that relevant authority;
and

(b) the provisions of this section are to
apply accordingly.

(5) In this section, “relevant duration
provision” (有關時限條文) means section 10(b), 13(b),
16(b), 19(b) or 22(1)(b) (as may be applicable).”.

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By adding –

“(1A) Where any protected product described in
subsection (1) contains any information that is subject to
legal professional privilege, subsection (1)(c) is to be
construed as also requiring the head of the department
concerned to make arrangements to ensure that any part
of the protected product that contains the information –

- (a) in the case of a prescribed
authorization for a postal
interception or covert surveillance,
is destroyed not later than 1 year
after its retention ceases to be
necessary for the purposes of any
civil or criminal proceedings before
any court that are pending or are
likely to be instituted; or
- (b) in the case of a prescribed
authorization for a
telecommunications interception, is

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as soon as reasonably practicable
destroyed.”.

56

By deleting subclause (2) and substituting –

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

- (a) in the case of subsection (1)(a), if –
 - (i) it continues to be, or is likely to become, necessary for the relevant purpose; or
 - (ii) 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; or
- (b) in the case of subsection (1)(c) –
 - (i) when it continues to be, or is likely to become, necessary for the relevant purpose; or
 - (ii) except in the case of a prescribed authorization for a telecommunications interception, at any time before the expiration of 1 year after it ceases to be necessary for the purposes of

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any civil or criminal proceedings before any court that are pending or are likely to be instituted.”.

- 57(2)
- (a) In paragraph (a)(ii)(A), by deleting everything after “application,” and substituting “for a period of at least 1 year after the pending proceedings, review or application has been finally determined or finally disposed of; or”.
 - (b) In paragraph (a)(ii)(B), by deleting “at least until” and substituting “for a period of at least 1 year after”.
 - (c) In paragraph (a)(ii)(B), by deleting “, until” and substituting “, for a period of at least 1 year after”.

58

By deleting subclause (4) and substituting –

“(4) Notwithstanding subsection (2) or any other provision of this Ordinance, where, for the purposes of any criminal proceedings (whether being criminal proceedings instituted for an offence or any related proceedings), any information obtained pursuant to a relevant prescribed authorization and continuing to be available to the department concerned might reasonably be considered capable of undermining the case for the prosecution against the defence or of assisting the case for the defence –

- (a) the department shall disclose the information to the prosecution; and
- (b) the prosecution shall then disclose the information to the judge in an ex parte hearing that is held in private.”.

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- 58 By deleting subclause (5).
- 58 By deleting subclause (6) and substituting –
- “(6) The judge may, further to the disclosure to him of the information under subsection (4)(b), make such orders as he thinks fit for the purpose of securing the fairness of the proceedings.”.
- 58 By adding –
- “(6A) Where any order is made under subsection (6) in any criminal proceedings, the prosecution shall disclose to the judge for any related proceedings the terms of the order and the information concerned in an ex parte hearing that is held in private.”.
- 58(7) By deleting “direction” and substituting “order”.
- 58(8) By adding –
- ““judge” (法官), in relation to any proceedings, means the judge or magistrate before whom those proceedings are or are to be heard, or any other judge or magistrate having jurisdiction to deal with the matter concerned;
- “related proceedings” (有關法律程序), in relation to any criminal proceedings, means any further proceedings (including appeal proceedings) arising from, or any proceedings preliminary or incidental to, those proceedings;”.

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- New By adding –
- “58A. Information subject to legal professional privilege to remain privileged**
- Any information that is subject to legal professional privilege is to remain privileged notwithstanding that it has been obtained pursuant to a prescribed authorization.”.
- 59(4) By deleting “have regard to” and substituting “comply with”.
- 60(1) By deleting “in” and substituting “relating to”.
- 60(2) (a) By deleting “prejudice to” and substituting “limiting”.
(b) By deleting “defect in” and substituting “defect relating to”.
- 62 By deleting “make regulation” and substituting “, subject to the approval of the Legislative Council, make regulations”.
- 63 By deleting everything after “may,” and substituting “subject to the approval of the Legislative Council, amend Schedules 1, 2, 3 and 4 by notice published in the Gazette.”.
- 65(1) (a) By deleting “the provision then in force as”.
(b) By deleting “sections 56 and 58 apply” and substituting “section 56 applies”.
(c) By deleting “and to the relevant matters”.
(d) By deleting paragraph (a)(i) and substituting –
“(i) the materials were protected product; and”.

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65

By adding –

“(2A) Nothing in this section operates to validate or authorize any telecommunications interception carried out pursuant to an order referred to in subsection (1).”.

65

By deleting subclause (3) and substituting –

“(3) In this section, “copy” (文本), in relation to any contents of a communication referred to in subsection (1), means any of the following (whether or not in documentary form) –

- (a) any copy, extract or summary of such contents;
- (b) any record referring to the telecommunications interception referred to in subsection (1) which is a record showing, directly or indirectly, the identity of any person who is the sender or intended recipient of the communication.”.

Schedule 2

Within the square brackets, by deleting “2, 6” and substituting “6, 51”.

Schedule 2,
section 1(2)

By deleting everything after “considered” and substituting “outside the court precincts at any place other than the premises of a department.”.

Schedule 2,
section 1

By deleting subsection (3) and substituting –

“(3) The panel judge may consider the application in such manner as he considers appropriate.”.

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- Schedule 2,
section 3(3)
- In paragraph (b), by adding “(including those performed at the request of the Commissioner under section 51(1A) of this Ordinance)” before “; and”.
- Schedule 2,
section 3(5)
- (a) In the English text, by adding “, whether” after “department concerned”.
- (b) By deleting “otherwise”.
- Schedule 2,
section 4
- By deleting the section.
- Schedule 3,
Part 1
- (a) In paragraph (b), by adding –
“(iva) the grounds for the reasonable suspicion specified in section 3(1)(aa) of this Ordinance;”.
- (b) In paragraph (b)(v), by deleting “nature of, and an assessment of the immediacy and gravity of” and substituting “following information”.
- (c) In paragraph (b)(v)(A), by deleting everything after “Ordinance,” and substituting “the particular serious crime to be prevented or detected and an assessment of its immediacy and gravity; or”.
- (d) In paragraph (b)(v)(B), by adding “, an assessment of its immediacy and gravity, and an assessment of its impact, both direct and indirect, on the security of Hong Kong, the residents of Hong Kong, or other persons in Hong Kong” before the semicolon.
- (e) In paragraph (b)(viii), by adding “, or may be the contents of any journalistic material,” after “privilege”.
- (f) In paragraph (b)(viii), by deleting “and”.
- (g) In paragraph (b), by adding –

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- “(x) if known, whether, during the preceding 2 years, there has been any application for the issue or renewal of a prescribed authorization in which –
- (A) any person set out in the affidavit under subparagraph (ii) has also been identified as the subject of the interception or covert surveillance concerned; or
 - (B) where the particulars of any telecommunications service have been set out in the affidavit under subparagraph (iii), the interception of any communication to or from that telecommunications service has also been sought,

and if so, particulars of such application; and”.

- (h) In paragraph (c), by deleting everything after “name” and substituting “, rank and post the applicant and any officer of the department concerned approving the making of the application.”.

Schedule 3,
Part 2

- (a) In paragraph (b), by adding –
“(va) the grounds for the reasonable suspicion specified in section 3(1)(aa) of this Ordinance;”.
- (b) In paragraph (b)(vi), by deleting “nature of, and an assessment of the immediacy and gravity of” and substituting “following information”.
- (c) In paragraph (b)(vi)(A), by deleting everything after “Ordinance,” and substituting “the particular serious crime to be prevented or detected and an assessment of its immediacy and gravity; or”.
- (d) In paragraph (b)(vi)(B), by adding “, an assessment of its

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immediacy and gravity, and an assessment of its impact, both direct and indirect, on the security of Hong Kong, the residents of Hong Kong, or other persons in Hong Kong” before the semicolon.

- (e) In paragraph (b)(ix), by adding “, or may be the contents of any journalistic material,” after “privilege”.
 - (f) In paragraph (b)(ix), by deleting “and”.
 - (g) In paragraph (b), by adding –
 - “(xi) if known, whether, during the preceding 2 years, there has been any application for the issue or renewal of a prescribed authorization in which any person set out in the affidavit under subparagraph (ii) has also been identified as the subject of the interception or covert surveillance concerned, and if so, particulars of such application; and”.
 - (h) In paragraph (c), by deleting everything after “name” and substituting “, rank and post the applicant and any officer of the department concerned approving the making of the application.”.
-
- (a) In paragraph (b), by adding –
 - “(va) the grounds for the reasonable suspicion specified in section 3(1)(aa) of this Ordinance;”.
 - (b) In paragraph (b)(vi), by deleting “nature of, and an assessment of the immediacy and gravity of” and substituting “following information”.
 - (c) In paragraph (b)(vi)(A), by deleting everything after “Ordinance,” and substituting “the particular serious crime to be prevented or detected and an assessment of its immediacy and gravity; or”.

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Part 3

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- (d) In paragraph (b)(vi)(B), by adding “, an assessment of its immediacy and gravity, and an assessment of its impact, both direct and indirect, on the security of Hong Kong, the residents of Hong Kong, or other persons in Hong Kong” before the semicolon.
- (e) In paragraph (b)(ix), by adding “, or may be the contents of any journalistic material,” after “privilege”.
- (f) In paragraph (b)(ix), by deleting “and”.
- (g) In paragraph (b), by adding –
 - “(xi) if known, whether, during the preceding 2 years, there has been any application for the issue or renewal of a prescribed authorization in which any person set out in the statement under subparagraph (ii) has also been identified as the subject of the interception or covert surveillance concerned, and if so, particulars of such application; and”.
- (h) In paragraph (c), by deleting “and rank” and substituting “, rank and post”.

Schedule 3,
Part 4

- (a) In paragraph (a)(i), by adding “and the duration of each renewal” before the semicolon.
- (b) In paragraph (a)(iii), by adding “an assessment of” before “the value”.
- (c) In paragraph (b), by deleting everything after “name” and substituting “, rank and post the applicant and any officer of the department concerned approving the making of the application.”.

Schedule 4

- In paragraph (b), by deleting “and rank” and substituting “, rank and post”.

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2(1) (definition of "prescribed authorization" and paragraph (a) of the definition of "relevant authority"), 8(1), 9(1), (2) and (3)(a), 10, 11(1) and (2)(b)(i) and (ii), 12(1), (3)(a) and (4), 13, 20(1)(b) and 22(2) and Schedule 3 (Parts 1, 2 and 4)

By deleting "judicial authorization" wherever it appears and substituting "judge's authorization".

Part 3

In the heading of Division 2, by deleting "**Judicial Authorizations**" and substituting "**Judge's Authorizations**".

8 and 11

In the cross-headings immediately before the clauses, by deleting "*judicial authorizations*" and substituting "*judge's authorizations*".

8, 9, 10, 11, 12 and 13

In the headings, by deleting "**judicial authorization**" and substituting "**judge's authorization**".

Schedule 3 (Parts 1, 2 and 4)

In the headings, by deleting "JUDICIAL AUTHORIZATION" and substituting "JUDGE'S AUTHORIZATION".

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