



**立法會CB(2)561/15-16(01)號文件**  
**LC Paper No. CB(2)561/15-16(01)**

香港中區

立法會道一號

立法會

2015 年截取通訊及監察(修訂)條例草案委員會主席

葉國謙議員

葉主席:

**提出修訂新加的第 38A 條**

就《截取通訊及監察(修訂)條例草案》(“《條例草案》”)建議新加的第 38A 條，關於向小組法官提交報告，處理不能執行器材取出手令的情況。

政府的建議只處理有器材取出手令但又不能執行時，交由小組法官予以撤銷手令，但沒有處理在訂明授權期限屆滿後但又沒有提出申請器材取出手令時，仍不能取出器材的情況。根據《實務守則》，有關人員只需要得到首長級人員的批准，並向專員提交報告便可不用理會有關的授權。這明顯是不妥當的做法。

本人現提出修訂建議，處理「沒有提出申請器材取出手令」的情況，規定執法機關須向一名法官提交報告，由法官撤銷訂明授權內的有關器材取出的授權，如法官不撤銷，則有關人員須申請器材取出手令，以及向專員作出報告。建議修訂條文詳見附件一。

這建議與政府建議向小組法官提交報告，以撤銷不能執行的器材取出手令相似，只是適用於以撤銷不能執行的器材取出規定(在訂明授權內授權但又未能在訂明授權期限屆滿前取出，亦沒有申請器材取出手令處理)的情況。在訂明授權期限屆滿仍未能取器材是會嚴重影響私隱，由小組法官作出撤銷的安排較為穩妥，亦與政府建議的處理不能執法器材取出手令的做法一致。

修訂文本有兩個版本，版本 A 是在器材取出手令沒有被撤銷或只部分被撤銷時，小組法官在手令或手令下進一步的授權施加的新條件，是根據手令的條款或本條例的任何條文而批予的。版本 B 則明確訂明，是根據手令的條款或本條例的第 29(6)或(7)或第 30 條而批予的。

如有查詢，請聯絡鄭慕貞女士，電話：28699530。謝謝！

立法會議員涂謹申謹啟

2015 年 12 月 31 日

附件：建議修訂草擬文本

Interception of Communications and Surveillance (Amendment) Bill 2015

**Committee Stage**

Amendments to be moved by the Hon. James To Kun-sun

Clause

Amendment Proposed

9 By deleting the clause and substituting —

**“9. Section 38A added**

Part 3, Division 6, after section 38—

**Add**

**“38A. Report to panel judge: device retrieval cannot be executed**

- (1) If, while a device retrieval warrant is in force but not yet completely executed, the officer of the department concerned who is for the time being in charge of the execution of the warrant—
  - (a) becomes aware that section 33(1)(a) or (b) does not apply to the devices or any of the devices specified in the warrant; or
  - (b) is of the opinion that the warrant or a part of the warrant cannot for whatever reason be executed,the officer must, as soon as practicable after becoming aware of the matter or forming the opinion, cause a report on the matter or opinion to be provided to a panel judge.
- (2) If a panel judge receives a report under

subsection (1), the panel judge may revoke the device retrieval warrant concerned or the relevant part of the device retrieval warrant concerned.

- (3) If the device retrieval warrant or a part of the device retrieval warrant is revoked under subsection (2), the warrant or that part of the warrant, despite section 35(b), ceases to have effect from the time of the revocation.
- (4) If the device retrieval warrant is not revoked or only part of the device retrieval warrant is revoked, the panel judge may do one or both of the following—
  - (a) vary any terms or conditions in the warrant;
  - (b) specify any new conditions in the warrant that apply to the warrant itself or to any further authorization under it (whether granted under its terms or any provision of this Ordinance).
- (5) If any decision of not applying for a device retrieval warrant is made, the officer of the department concerned who has made the decision must, as soon as practicable after making such a decision, cause a report on the decision to be provided to a panel judge.
- (6) If a panel judge receives a report under subsection (5), the panel judge may revoke the device retrieval authorization in the prescribed authorization concerned

or the relevant part of the device retrieval authorization concerned.

- (7) If the device retrieval authorization is not revoked or only part of the device retrieval authorization is revoked, the panel judge may do one or both of the following—
  - (a) cause an application of device retrieval warrant be made;
  - (b) cause a report on the decision be made to the Commissioner.”.”.

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建議修正案

9 刪去該條而代以 —

“9. 加入第 38A 條

第 3 部，第 6 分部，在第 38 條之後 ——

加入

“38A. 向小組法官提供報告：不能執行器材取出

- (1) 如在某器材取出手令有效但未完成執行的期間內，有關部門在當其時負責執行該手令的人員——
  - (a) 知悉第33(1)(a) 或(b) 條不適用於該手令所指明的器材或所指明的任何器材；或
  - (b) 認為該手令或其某部分，因某原因( 不論該原因為何) 而不能執行，

該人員須在知悉該事宜或得出該意見後，於切實可行範圍內，盡快安排向一名小組法官，提供一份關於該事宜或意見的報告。

- (2) 如某小組法官接獲第(1) 款所指的報告，該法官可撤銷有關器材取出手令或其有關部分。
- (3) 如器材取出手令或其某部分根據第(2) 款被撤銷，則儘管有第 35(b) 條的規定，該手令或該部分自被撤銷之時起失效。
- (4) 如器材取出手令沒有被撤銷，或只有部分被撤銷，小組法官可行使以下一項或兩項權力——
  - (a) 更改該手令的任何條款或條件；
  - (b) 在該手令中指明適用於該手令本身或在該手令下的任何進一步的授權( 不論是根據該手令的條款或本條例的任何條文而批予的) 的任何新

條件。

- (5) 如不提出器材取出手令的申請的決定已作出，有關部門作出決定的人員須在作出決定後，於切實可行範圍內，盡快安排向一名小組法官，提供一份關於該決定的報告。
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