

立法會
Legislative Council

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by the Administration)

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Bills Committee on
Interception of Communications and Surveillance (Amendment) Bill 2015

Minutes of meeting
held on Monday, 12 October 2015, at 10:45 am
in Conference Room 3 of the Legislative Council Complex

Members present : Hon IP Kwok-him, GBS, JP (Chairman)
Hon YIU Si-wing, BBS (Deputy Chairman)
Hon James TO Kun-sun
Hon CHAN Kam-lam, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon CHAN Kin-por, BBS, JP
Hon WONG Kwok-kin, SBS
Hon Paul TSE Wai-chun, JP
Hon WONG Yuk-man
Hon Claudia MO
Hon NG Leung-sing, SBS, JP
Hon Frankie YICK Chi-ming, JP
Hon MA Fung-kwok, SBS, JP
Hon Charles Peter MOK, JP
Hon KWOK Wai-keung
Hon Dennis KWOK
Hon SIN Chung-kai, SBS, JP
Dr Hon Elizabeth QUAT, JP
Hon Tony TSE Wai-chuen, BBS

Members absent : Hon Cyd HO Sau-lan, JP
Hon LEUNG Che-cheung, BBS, MH, JP
Dr Hon CHIANG Lai-wan, JP
Hon CHUNG Kwok-pan
Hon Christopher CHUNG Shu-kun, BBS, MH, JP

**Public Officers : Item I
attending**

Ms Mimi LEE Mei-mei, JP
Deputy Secretary for Security 1

Mrs Millie NG KIANG Mei-nei
Principal Assistant Secretary for Security E

Mr CHIU Man-hin
Assistant Secretary for Security E2

Mr Godfrey KAN Ka-fai
Senior Assistant Solicitor General
Department of Justice

Ms Monica LAW Man-yuen
Senior Assistant Law Draftsman (II)2
Department of Justice

**Clerk in : Miss Betty MA
attendance Chief Council Secretary (2) 1**

**Staff in : Mr Timothy TSO
attendance Senior Assistant Legal Adviser 1**

Mr Raymond LAM
Senior Council Secretary (2) 7

Miss Lulu YEUNG
Clerical Assistant (2) 1

I. Meeting with the Administration

The Bills Committee deliberated (index of proceedings attached at **Annex**).

2. Members requested the Administration to -

- (a) explain whether law enforcement agencies ("LEAs") were required to retrieve devices deployed in a covert surveillance operation after completion of the operation concerned and whether any device had not been so retrieved in the past;

- (b) explain how a non-physical surveillance device, such as a software, was retrieved by LEAs;
- (c) consider amending the heading "撤銷器材取出手令" of the proposed section 38A of the Interception of Communications and Surveillance Ordinance ("ICSO") (Cap. 589) as "器材取出手令的撤銷" and review the drafting of the Chinese version of the proposed section;
- (d) provide information on whether there had been any case in which the devices used in covert operations were lost and could not be recovered;
- (e) consider amending ICSO to make the retrieval of covert surveillance devices after completion of the operation concerned a mandatory requirement;
- (f) consider amending "month and year" in the proposed amendments to section 44(2)(a) and section 48(1)(a) of ICSO as "day, month and year" and review whether the proposed sections as amended would enable the notification of all periods of non-compliance to relevant persons;
- (g) review the need for the phrase "Without prejudice to section 53(4)" in section 46(3) of ICSO;
- (h) provide information on the sections in ICSO to which "Except as otherwise provided in this Ordinance" in section 53(4) of ICSO referred; and
- (i) consider reviewing the proposed section 53A(1) of ICSO to further restrict the class of officers to whom the Commissioner's power might be delegated.

II. Any other business

3. Members noted that the next meeting had been scheduled for 23 October 2015 at 8:30 am to continue discussion with the Administration.

4. There being no other business, the meeting ended at 12:47 pm.

Council Business Division 2
Legislative Council Secretariat
30 October 2015

**Proceedings of meeting of the Bills Committee on
Interception of Communications and Surveillance (Amendment) Bill 2015
held on Monday, 12 October 2015, at 10:45 am
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker(s)	Subject(s)	Action Required
<i>Continuation of clause-by-clause examination</i>			
000000 - 000240	Chairman	Opening remarks	
000241 - 001937	Admin Mr James TO Mr SIN Chung-kai Chairman	<p>Examination of clause 8 of the Bill.</p> <p>Mr James TO's question and the Administration's response regarding the meaning of the proposed amendment to section 27(3)(a)(ii) and the proposed section 27(3A)(b) of the Interception of Communications and Surveillance Ordinance ("ICSO") (Cap. 589).</p> <p>Concerns of Mr James TO and Mr SIN Chung-kai regarding the meaning of "further authorization" in the proposed section 27(3A)(b) of ICSO.</p> <p>Administration's response that in response to members' suggestion at the last meeting, it would examine whether there was a need for amending "further authorization" in different provisions of ICSO to make it clear that it was any of the authorizations referred to in section 29 and section 30 of ICSO which was ancillary to the prescribed authorization concerned.</p>	
001938 - 010447	Chairman Admin Mr SIN Chung-kai Mr James TO Mr WONG Yuk-man Ms Claudia MO Mr Paul TSE	<p>Examination of clause 9 of the Bill.</p> <p>Mr SIN Chung-kai's question and the Administration's response regarding whether every device retrieval warrant had a validity period.</p> <p>Concerns of Mr James TO, Mr SIN Chung-kai and Ms Claudia MO regarding whether LEAs were required to retrieve all devices deployed in each covert surveillance operation after completion of the operation concerned and whether any device had not been so retrieved in the past.</p>	

Time marker	Speaker(s)	Subject(s)	Action Required
		<p>Administration's advice that the use of surveillance devices for ICSO operations had been closely monitored by the Commissioner on Interception of Communications and Surveillance ("the Commissioner"), and all devices used for such operations had to be returned to the ICSO device store after each operation and the movements of such devices were properly recorded for the Commissioner's review. A device retrieval warrant was needed only when a device could not be retrieved before end of the relevant authorization. LEAs had not applied for any device retrieval warrant since ICSO came into operation.</p> <p>Suggestion of Mr WONG Yuk-man that the heading of the proposed section 38A of ICSO be amended as "器材取出手令的撤銷".</p> <p>Ms Claudia MO's concern regarding whether there had been any case in which the devices used in the covert operations were lost and could not be recovered.</p> <p>Mr Paul TSE's view and the Administration's response regarding the need for the proposed section 38A of ICSO and drafting of the Chinese version of the proposed section.</p> <p>The Administration was requested to -</p> <ul style="list-style-type: none"> (a) explain whether LEAs were required to retrieve devices deployed in a covert surveillance operation after completion of the operation concerned and whether any device had not been so retrieved in the past; (b) explain how a non-physical surveillance device, such as a software, was retrieved by LEAs; (c) consider amending the heading "撤銷器材取出手令" of the proposed section 38A of ICSO as "器材取出手令的撤銷" and review the drafting of the Chinese version of the proposed section; 	<p>Admin</p>

Time marker	Speaker(s)	Subject(s)	Action Required
		<p>(d) explain whether there had been any case in which the devices used in covert operations were lost and could not be recovered; and</p> <p>(e) consider amending ICSO to make the retrieval of covert surveillance devices after completion of the operation concerned a mandatory requirement.</p>	
010448 - 011821	<p>Chairman Admin Mr SIN Chung-kai Mr James TO Ms Claudia MO</p>	<p>Examination of clause 10 and clause 12(1) of the Bill.</p> <p>Views of Mr SIN Chung-kai, Mr James TO and Ms Claudia MO regarding the drafting of the proposed amendments to section 44(2)(a) and section 48(1)(a) of ICSO and the Administration's response.</p> <p>The Administration was requested to consider amending "month and year" in the proposed amendments to section 44(2)(a) and section 48(1)(a) of ICSO as "day, month and year" and review whether the proposed sections as amended would enable the notification of all periods of non-compliance to relevant persons.</p>	Admin
011822 - 014005	<p>Chairman Admin Mr James TO SALA1 Ms Claudia MO Mr SIN Chung-kai</p>	<p>Examination of clause 11 of the Bill.</p> <p>Views of Mr James TO, SALA1's advice and the Administration's response regarding the effect of the proposed amendment to section 46(3) of ICSO.</p> <p>Ms Claudia MO's question and the Administration's response regarding the Chinese rendition of "determination" in section 46(4)(a) of ICSO.</p> <p>Mr James TO's question and the Administration's response regarding the relationship between section 46(3) and section 53(4) of ICSO.</p> <p>The Administration was requested to provide information on the sections in ICSO to which "Except as otherwise provided in this Ordinance" in section 53(4) of ICSO referred</p>	Admin

Time marker	Speaker(s)	Subject(s)	Action Required
		and review the need for the phrase "Without prejudice to section 53(4)" in section 46(3) of ICSO.	
014006 - 014839	Chairman Admin Mr James TO Ms Claudia MO	Examination of clause 12(2) of the Bill. Questions of Mr James TO and Ms Claudia MO regarding scenarios falling under the scope of the proposed section 48(7)(b) of ICSO and the Administration's response.	
014840 - 020316	Chairman Admin Mr James TO SALA1 Ms Claudia MO	Examination of clauses 13 and 14 of the Bill. Questions of Mr James TO and Ms Claudia MO, advice of SALA1 and the Administration's response regarding the meaning of "an officer working in the Commissioner's office who is responsible to the Commissioner" in the proposed section 53A(1) of ICSO. Mr James TO's view that officers of the Commissioner's office to be delegated with the power to examine protected products under the proposed section 53A of ICSO should not be lower than a rank equivalent to Senior Executive Officer and the Administration's response. The Administration was requested to consider reviewing the proposed section 53A(1) of ICSO to further restrict the class of officers to whom the Commissioner's power might be delegated.	Admin
020317 - 020410	Chairman Mr James TO	Date of next meeting	