

立法會
Legislative Council

LC Paper No. CB(2)394/15-16
(These minutes have been seen
by the Administration)

Ref : CB2/BC/1/14

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

**Minutes of meeting
held on Friday, 23 October 2015, at 8:30 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 Cyd HO Sau-lan, JP
Hon CHAN Kin-por, BBS, JP
Hon WONG Kwok-kin, SBS
Hon Paul TSE Wai-chun, JP
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 LEUNG Che-cheung, BBS, MH, JP
Hon KWOK Wai-keung
Hon SIN Chung-kai, SBS, JP
Dr Hon Elizabeth QUAT, JP
Hon Christopher CHUNG Shu-kun, BBS, MH, JP
Hon Tony TSE Wai-chuen, BBS
- Members absent** : Hon WONG Yuk-man
Hon Dennis KWOK
Dr Hon CHIANG Lai-wan, JP
Hon CHUNG Kwok-pan

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

Ms Kiwi NG
Legislative 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 how a non-physical device, such as a programme, deployed in a covert surveillance operation was retrieved by law enforcement officers after completion of the operation

concerned and provide information on the relevant requirements on law enforcement agencies ("LEAs");

- (b) advise whether law enforcement officers could deactivate/retrieve, from a remote location and without physical contact, a surveillance device in the form of a programme;
- (c) explain whether the requirements and arrangements in paragraphs 5 and 6 of the Administration's paper (LC Paper No. CB(2)75/15-16(01)) were consistent with the requirements under Article 30 of the Basic Law in relation to protection of freedom and privacy of communication by law;
- (d) reconsider setting out in the Interception of Communications and Surveillance Ordinance ("ICSO") (Cap. 589) the requirements and arrangements for LEAs to retrieve devices deployed in a covert surveillance operation after its completion;
- (e) explain, in relation to cases where a device could not be retrieved after the covert surveillance operation concerned was completed, whether measures were taken to minimize the impact of non-retrieval of device on the privacy of the subject of covert surveillance;
- (f) confirm whether the proposed new section 54(2) of ICSO would have any impact on the interpretation of other similar provisions in ICSO; and
- (g) consider amending "cause the interception or covert surveillance concerned to be discontinued" in section 57(1) of ICSO along the line of "order and cause the interception or covert surveillance concerned to be discontinued".

3. The Administration advised that it would provide a response to the suggestion at the last meeting of reviewing the proposed section 53A(1) of ICSO to further restrict the class of officers to whom the power of the Commissioner on Interception of Communications and Surveillance could be delegated.

II. Any other business

4. Members noted that the next meeting had been scheduled for 2 November 2015 at 2:30 pm to continue discussion with the Administration.

5. There being no other business, the meeting ended at 10:30 am.

Council Business Division 2
Legislative Council Secretariat
3 December 2015

**Proceedings of meeting of the Bills Committee on
Interception of Communications and Surveillance (Amendment) Bill 2015
held on Friday, 23 October 2015, at 8:30 am
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker(s)	Subject(s)	Action Required
000000 - 000723	Chairman Mr James TO	Opening remarks and relevant papers	
<i>Administration's response to issues raised at previous meetings</i>			
000724 - 002113	Admin	Briefing by the Administration on its response to certain issues raised at the meetings on 6 and 12 October 2015 (LC Paper No. CB(2)75/15-16(01)).	
002114 - 003407	Chairman Mr James TO Admin	Mr James TO's concerns and the Administration's response regarding whether the requirements and arrangements for law enforcement agencies ("LEAs") to retrieve devices deployed in a covert surveillance operation after its completion, as detailed in paragraphs 5 and 6 of the Administration's paper, should be set out in the Interception of Communications and Surveillance Ordinance ("ICSO") (Cap. 589).	
003408 - 004327	Chairman Mr SIN Chung-kai Mr Charles MOK Mr Christopher CHUNG Ms Emily LAU Admin	Views of Mr SIN Chung-kai, Mr Charles MOK, Mr Christopher CHUNG, Ms Emily LAU and the Administration's response regarding the difficulties in retrieving programme deployed in covert surveillance after completion of the operation concerned. The Administration was requested to explain how a non-physical device, such as a programme, deployed in a covert surveillance operation was retrieved by law enforcement officers after completion of the operation concerned and provide information on the relevant requirements on LEAs.	Admin
004328 - 005205	Ms Emily LAU Chairman Admin	Ms Emily LAU's concern regarding - (a) whether any law enforcement officers had been disciplined for breach of paragraphs 136 and 137 of the Code of Practice ("CoP") regarding the retrieval of surveillance devices after completion of covert surveillance operation; and	

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		<p>(b) whether there was any mechanism in place to prevent the use of information obtained which was subject to legal professional privilege ("LPP").</p> <p>Administration's response that -</p> <p>(a) all devices deployed in covert surveillance operations had so far been retrieved and there had not been any case of breach of paragraphs 136 and 137 of CoP; and</p> <p>(b) under section 62 of ICSO, any information subject to LPP was to remain privileged notwithstanding that it had been obtained pursuant to a prescribed authorization. The safeguards for protected products were provided in section 59 of ICSO.</p>	
005206 - 005853	Chairman Mr James TO SALA1 Admin	<p>Mr James TO's concerns and the Administration's response regarding whether there was any inconsistency between the requirements and arrangements in paragraphs 5 and 6 of the Administration's paper and the requirements under Article 30 of the Basic Law ("BL30") in relation to protection of freedom and privacy of communication by law.</p> <p>The Administration was requested to explain whether the requirements and arrangements in paragraphs 5 and 6 of the Administration's paper were consistent with the requirements under BL30 in relation to protection of freedom and privacy of communication by law.</p>	Admin
005854 - 010610	Chairman Ms Claudia MO Admin	<p>Ms Claudia MO's concerns regarding whether communication with other professionals, such as doctors, and journalistic material were subject to protection similar to that for information subject to LPP.</p> <p>Administration's response that -</p> <p>(a) safeguards for information subject to LPP and journalistic material had been provided for under ICSO and CoP; and</p>	

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		<p>(b) section 3 of ICSO provided that one of the conditions that had to be met for the issue, renewal or continuance of prescribed authorization was that the interception or covert surveillance was necessary for, and proportionate to, the purpose sought to be furthered by carrying it out, upon, among other things balancing all relevant factors against the intrusiveness of interception or covert surveillance. Schedule 3 to ICSO also required that an affidavit supporting an application for the issue of a prescribed authorization should contain, among other things, an assessment of the impact, if any, of the interception or covert surveillance on any person other than the subject of interception or covert surveillance.</p>	
010611 - 011225	<p>Chairman Mr SIN Chung-kai Ms Cyd HO Admin</p>	<p>Mr SIN Chung-kai's views regarding the difficulties in retrieving software deployed in a covert surveillance operation after law enforcement officers had completed the operation concerned.</p> <p>Ms Cyd HO's concerns and the Administration's response regarding whether law enforcement officers could deactivate/retrieve, from a remote location and without physical contact, a surveillance device in the form of a programme.</p> <p>The Administration was requested to advise whether law enforcement officers could deactivate/retrieve, from a remote location and without physical contact, a surveillance device in the form of a programme.</p>	<p>Admin</p>
011226 - 013103	<p>Chairman Mr James TO Admin SALA1</p>	<p>Mr James TO's concerns and the Administration's response regarding -</p> <p>(a) whether the requirements and arrangements for LEAs to retrieve devices deployed in a covert surveillance operation after its completion should be set out in ICSO; and</p>	

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		<p>(b) whether measures were taken, in relation to cases where a device could not be retrieved after the covert surveillance operation concerned was completed, to minimize the impact of non-retrieval of device on the privacy of the subject of covert surveillance.</p> <p>Mr James TO's concerns, SALA1's views and Administration's response regarding whether law enforcement officers were allowed under ICSO and CoP to continue receiving information sent from a hidden surveillance device after the prescribed authorization concerned had expired.</p> <p>The Administration was requested -</p> <p>(a) to reconsider setting out in ICSO the requirements and arrangements for LEAs to retrieve devices deployed in a covert surveillance operation after its completion; and</p> <p>(b) to explain, in relation to cases where a device could not be retrieved after the covert surveillance operation concerned was completed, whether measures were taken to minimize the impact of non-retrieval of device on the privacy of the subject of covert surveillance.</p>	<p>Admin</p>
<p><i>Continuation of clause-by-clause examination</i></p>			
<p>013104 - 013309</p>	<p>Chairman Mr James TO Admin SALA1</p>	<p>Continuation of examination of clause 14 of the Bill.</p> <p>Administration's advice that it would provide a response to the suggestion at the last meeting of reviewing the proposed new section 53A(1) of ICSO to further restrict the class of officers to whom the power of the Commissioner on Interception of Communications and Surveillance ("the Commissioner") could be delegated.</p> <p>Mr James TO's concern regarding whether a person delegated by the Commissioner with the power to examine protected products could further delegate the power to other persons.</p>	

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		<p>Administration's response that a person delegated by the Commissioner with the power to examine protected products was not empowered to further delegate the power to other persons.</p> <p>SALA1's view that the proposed new section 53A as currently drafted would provide the Commissioner but not other persons with such power of delegation.</p>	
013310 - 014832	<p>Chairman Admin Mr James TO Ms Claudia MO SALA1 Mr NG Leung-sing</p>	<p>Examination of clause 15 of the Bill.</p> <p>Mr James TO's concerns and the Administration's response regarding whether the proposed new section 54(2) of ICSO would have any impact on the interpretation of other similar provisions in ICSO.</p> <p>The Administration was requested to confirm whether the proposed new section 54(2) of ICSO would have any impact on the interpretation of other similar provisions in ICSO.</p> <p>Ms Claudia MO's concerns, views of Mr NG Leung-sing, the Administration's response and SALA1's views regarding whether there was any conflict between the proposed subsections (1) and (2) of section 54 of ICSO.</p>	Admin
014833 - 020049	<p>Chairman Admin Mr James TO</p>	<p>Examination of clause 16 of the Bill.</p> <p>Mr James TO's questions and the Administration's response regarding the meaning of "the officer by whom any regular review is or has been conducted" in section 57(1) of ICSO.</p> <p>Mr James TO's views and the Administration's response regarding whether "cause the interception or covert surveillance concerned to be discontinued" in section 57(1) of ICSO should be amended along the line of "order and cause the interception or covert surveillance concerned to be discontinued".</p> <p>The Administration was requested to consider amending "cause the interception or covert</p>	Admin

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		surveillance concerned to be discontinued" in section 57(1) of ICSO along the line of "order and cause the interception or covert surveillance concerned to be discontinued".	
020050 - 020112	Chairman	Date of next meeting	

Council Business Division 2
Legislative Council Secretariat
3 December 2015