

立法會
Legislative Council

LC Paper No. CB(2)396/15-16
(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 Monday, 9 November 2015, at 2:30 pm
in Conference Room 1 of the Legislative Council Complex

- Members present** : Hon IP Kwok-him, GBS, JP (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 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 LEUNG Che-cheung, BBS, MH, JP
Hon Dennis KWOK
Dr Hon Elizabeth QUAT, JP
Dr Hon CHIANG Lai-wan, JP
Hon Christopher CHUNG Shu-kun, BBS, MH, JP
- Members absent** : Hon YIU Si-wing, BBS (Deputy Chairman)
Hon WONG Kwok-kin, SBS
Hon KWOK Wai-keung
Hon SIN Chung-kai, SBS, JP
Hon CHUNG Kwok-pan
Hon Tony TSE Wai-chuen, BBS

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) review the Administration's proposed Committee stage amendments ("CSAs") to renumber clauses 10 of the Bill as clause 10(1);

- (b) consider requiring law enforcement officers to report all time gaps between the revocation of a prescribed authorization and actual discontinuance of operation to the Commissioner on Interception of Communications and Surveillance ("the Commissioner") under the proposed new section 65A of the Interception of Communications and Surveillance Ordinance ("ICSO") (Cap. 589) and amending the penultimate sentence "The time of discontinuance should be reported to the Commissioner" in the proposed last additional paragraph of the Code of Practice ("CoP") as "In any event, the time of discontinuance must be reported to the Commissioner";
- (c) consider setting out in CoP the requirement for law enforcement officers to record the time at which a prescribed authorization was revoked;
- (d) explain the meaning of the phrase "shall not use...any products obtained during the time gap" in the last sentence of the proposed second additional paragraph of CoP, including whether law enforcement officers were allowed to keep a written record of the products obtained with a remark that it should not be used; and
- (e) consult the Commissioner and panel judges on the proposal to amend section 59(1) of ICSO to provide that it had an overriding effect on the immediate destruction requirements under sections 23(3)(a), 24(3)(b), 26(3)(b)(i) and 27(3)(b) of ICSO.

3. The Administration advised that it would review in the future the benchmark of 60 minutes between the revocation of a prescribed authorization and the actual discontinuance of operation, having regard to operational experience gained in relation to the benchmark.

4. Mr James TO said that he would consider proposing CSAs to set out in the proposed new section 65A of ICSO the requirement that law enforcement officers should not use any products obtained after the prescribed authorization concerned was revoked.

II. Any other business

5. Members noted that the next meeting had been scheduled for 16 November 2015 at 10:45 am to continue discussion with the Administration.

6. The Chairman said that individual members who wished to propose amendments to the Bill should forward their amendments to the Clerk for consideration by the Bills Committee.

7. There being no other business, the meeting ended at 4:28 pm.

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 Monday, 9 November 2015, at 2:30 pm
in Conference Room 1 of the Legislative Council Complex**

Time marker	Speaker(s)	Subject(s)	Action Required
000000 - 000803	Chairman	Opening remarks	
000804 - 003830	Admin	Briefing by the Administration on its response to issues raised at the Bills Committee meetings on 6, 12, 23 October and 2 November 2015 as well as the letter dated 4 November 2015 from Mr James TO (LC Paper No. CB(2)214/15-16(01)).	
003831 - 004416	Chairman Mr James TO	Approach for discussion of the Administration's paper. Timing for provision of papers by the Administration.	
004417 - 004623	Chairman Mr James TO SALA1 Admin	Discussion of paragraphs 1 to 4 of the Annex to the Administration's paper. SALA1's views, Mr James TO's question and the Administration's response regarding the Administration's proposed Committee stage amendments ("CSAs") to clauses 10 of the Bill as clause 10(1). The Administration was requested to review its proposed CSAs to clauses 10 of the Bill as clause 10(1).	Admin
004624 - 013624	Chairman Mr Dennis KWOK Mr James TO Admin	Discussion of paragraphs 5 to 9 of the Annex to the Administration's paper. Mr Dennis KWOK's views that - (a) the benchmark of 60 minutes between the revocation of a prescribed authorization and the actual discontinuance of operation was too long; (b) the benchmark should be set out in the Interception of Communications and	

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		<p>Surveillance Ordinance ("ICSO") (Cap. 589) instead of the Code of Practice ("CoP");</p> <p>(c) law enforcement officers should be required to report all time gaps between the revocation of a prescribed authorization and actual discontinuance of operation to the Commissioner on Interception of Communications and Surveillance ("the Commissioner"); and</p> <p>(d) the penultimate sentence "The time of discontinuance should be reported to the Commissioner" in the proposed last additional paragraph of CoP should be amended as "In any event, the time of discontinuance must be reported to the Commissioner".</p> <p>Mr James TO's view that -</p> <p>(a) the benchmark of 60 minutes as referred to in paragraph 7 of the Annex to the Administration's paper should be shortened to, say, 30 minutes;</p> <p>(b) law enforcement officers should not be allowed to use any products obtained after the prescribed authorization concerned was revoked and such a requirement should be set out in the proposed new section 65A of ICSO; and</p> <p>(c) law enforcement officers should be required to record the time at which a prescribed authorization was revoked.</p> <p>Administration's response that -</p> <p>(a) due to the time required for communication of the revocation decision to officers responsible for discontinuing an operation and the time needed for actual discontinuance, there was inevitably a time gap between revocation of a prescribed authorization and the actual discontinuance of operation;</p>	

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		<p>(b) law enforcement agencies had assigned dedicated teams not involved in the investigation of the cases concerned to listen to communications intercepted. In most of the cases, law enforcement officers could fulfil the requirement of not gaining any access to products obtained during the time gap;</p> <p>(c) in cases of emergency, such as those life and death cases, the task of listening to communications was carried out simultaneously at the time of interception and thus there were practical difficulties in fulfilling the requirement of not gaining any access to products obtained during the time gap in full;</p> <p>(d) it had been set out in the proposed additional paragraphs of CoP that as soon as an officer had notice of the revocation, the officer should not use or gain access to any products obtained during the time gap between revocation of a prescribed authorization and actual discontinuance of operation;</p> <p>(e) it was more appropriate to set out operational details in CoP, which was issued by the Secretary for Security under section 63 of ICSO;</p> <p>(f) safeguards had been provided in section 59 of ICSO for protected products. Section 60 of ICSO also set out the requirements on record keeping. Section 63(4) of ICSO required law enforcement officers to comply with the provisions of CoP in performing any function under ICSO;</p> <p>(g) the benchmark of 60 minutes was determined on the basis of experience gained in the implementation of ICSO in the past nine years; and</p> <p>(h) the Administration would review the benchmark of 60 minutes in the future having regard to operational experience gained in relation to the benchmark.</p>	

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		<p>Mr James TO's questions and the Administration's response regarding the meaning of the phrase "shall not use...any products obtained during the time gap" in the last sentence of the proposed second additional paragraph of CoP, including whether law enforcement officers were allowed to keep a written record of the products obtained with a remark that it should not be used.</p> <p>The Administration was requested to -</p> <ul style="list-style-type: none"> (a) consider requiring law enforcement officers to report all time gaps between the revocation of a prescribed authorization and actual discontinuance of operation to the Commissioner under the proposed new section 65A of ICSO and amending the penultimate sentence "The time of discontinuance should be reported to the Commissioner" in the proposed last additional paragraph of CoP as "In any event, the time of discontinuance must be reported to the Commissioner"; (b) consider setting out in CoP the requirement for law enforcement officers to record the time at which a prescribed authorization was revoked; and (c) explain the meaning of the phrase "shall not use...any products obtained during the time gap" in the last sentence of the proposed second additional paragraph of CoP, including whether law enforcement officers were allowed to keep a written record of the products obtained with a remark that it should not be used. <p>Mr James TO advised that he would consider proposing CSAs to set out in the proposed new section 65A of ICSO the requirement that law enforcement officers should not use any products obtained after the prescribed authorization concerned was revoked.</p>	<p>Admin</p>

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013625 - 014157	Chairman Mr James TO SALA1 Admin	<p>Discussion of paragraphs 10 to 14 of the Annex to the Administration's paper.</p> <p>Mr James TO's question, SALA1's view and the Administration's response regarding whether there was a need to amend the proposed new section 24(3A) of ICSO to make it clear that the "further authorization" referred to in the subsection was any of the authorizations referred to in section 29 and section 30 of ICSO which was an ancillary authorization and whether there was a need for consequential amendment to section 32 of ICSO.</p> <p>Mr James TO's question regarding whether Members could move CSAs to amend the proposed new section 24(3A) and section 32 of ICSO.</p> <p>SALA1's advice that -</p> <p>(a) under Rule 57(4)(a) of the Rules of Procedure, an amendment to a bill must be relevant to the subject matter of the bill and to the subject matter of the clause to which it related; and</p> <p>(b) when considering whether an amendment was relevant to the subject matter of a bill, the President of the Legislative Council ("LegCo") had in past rulings all along taken into account all relevant factors including the long title, the relevant clause(s), the explanatory memorandum, the LegCo Brief on the bill and other relevant factors.</p>	
014158 - 015102	Chairman Mr James TO Admin	<p>Discussion of paragraphs 15 to 17 of the Annex to the Administration's paper.</p> <p>Mr James TO's view and the Administration's response regarding whether there was a need to amend section 59(1) to provide that it had an overriding effect on the immediate destruction requirements under sections 23(3)(a), 24(3)(b), 26(3)(b)(i) and 27(3)(b) of ICSO.</p>	

Time marker	Speaker(s)	Subject(s)	Action Required
		The Administration was requested to consult the Commissioner and panel judges on the proposal to amend section 59(1) of ICSO to provide that it had an overriding effect on the immediate destruction requirements under sections 23(3)(a), 24(3)(b), 26(3)(b)(i) and 27(3)(b) of ICSO.	Admin
015103 - 015300	Chairman Mr James TO Admin	Discussion of paragraphs 18 to 19 of the Annex to the Administration's paper. Mr James TO's question and the Administration's response regarding whether consequential amendments to ICSO were required as a result of the proposed amendments to section 54 of ICSO.	
015301 - 015700	Chairman Mr James TO Admin	Discussion of paragraphs 20 to 22 of the Annex to the Administration's paper. Mr James TO's views and the Administration's response regarding whether there was a need to amend the proposed new section 53A(1) of ICSO to restrict the class of officers to whom the Commissioner could delegate his power to examine protected products.	
015701 - 015956	Chairman	Provision by members of proposed CSAs for discussion by the Bills Committee. Possible dates of resumption of Second Reading debate on the Bill. Date of next meeting	