

立法會
Legislative Council

LC Paper No. CB(3) 487/15-16

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Tel : 3919 3306

Date : 22 March 2016

From : Clerk to the Legislative Council

To : All Members of the Legislative Council

**Interception of Communications and Surveillance
(Amendment) Bill 2015 (“the Bill”)**

**Hon James TO’s and Hon WONG Yuk-man’s proposed
Committee stage amendments (“CSAs”)**

Members are invited to note that the President has given permission for Hon James TO, subject to the Bill receiving a Second Reading, to move the following proposed CSAs to the Bill:

- six CSAs to clauses 6(2), 8(2), 16(10), 17(5) and 18 and to add new clause 8A;
- one CSA to clause 13;
- three CSAs (Versions A, B and C) to clause 18;
- one CSA to clause 19; and
- three CSAs (Versions A, B and C) to clause 20.

Hon WONG Yuk-man is also permitted to move four proposed CSAs to clause 16 of the Bill.

2. As directed by the President, the proposed CSAs are attached for Members’ consideration.

3. Members were informed vide LC Paper No. CB(3) 439/15-16 issued on 3 March 2016 that the President had also given permission for the Secretary for Security to move proposed CSAs to the Bill.

(Boris LAM)
for Clerk to the Legislative Council

Encl.

Interception of Communications and Surveillance (Amendment) Bill 2015

Committee Stage

Amendments to be moved by the Honourable James TO Kun-sun

<u>Clause</u>	<u>Amendment Proposed</u>
6(2)	In the proposed section 24(3A), by deleting “any provision of this Ordinance” and substituting “under those terms referred to in section 29(1) to (5), or under section 29(6) or (7) or 30”.
8(2)	In the proposed section 27(3A)(b), by deleting “any provision of this Ordinance” and substituting “under those terms referred to in section 29(1) to (5), or under section 29(6) or (7) or 30”.
New	<p>By adding—</p> <p>“8A. Section 32 amended (prescribed authorization may be issued or renewed subject to conditions)</p> <p>Section 32—</p> <p>Repeal</p> <p>“any provision of this Ordinance”</p> <p>Substitute</p> <p>“under those terms referred to in section 29(1) to (5), or under section 29(6) or (7) or 30”.”.</p>
16(10)	In the proposed section 57(5A)(b), by deleting “any provision of this Ordinance” and substituting “under those terms referred to in section 29(1) to (5), or under section 29(6) or (7) or 30”.

- 17(5) In the proposed section 58(3A)(b), by deleting “any provision of this Ordinance” and substituting “under those terms referred to in section 29(1) to (5), or under section 29(6) or (7) or 30”.
- 18 In the proposed section 58A(6)(b), by deleting “any provision of this Ordinance” and substituting “under those terms referred to in section 29(1) to (5), or under section 29(6) or (7) or 30”.

Interception of Communications and Surveillance (Amendment) Bill 2015

Committee Stage

Amendments to be moved by the Honourable James TO Kun-sun

Clause

Amendment Proposed

13 By deleting the clause and substituting —

“13. Section 53 amended (further powers of Commissioner)

(1) Section 53(1)(a), after “other matter”—

Add

“(including any protected product, whether or not it contains any information that is or may be subject to legal professional privilege)”.

(2) After section 53(3) —

Add

“(3A) Any person who fails to comply with a requirement imposed by the Commissioner under subsection (1)(a) commits an offence and is liable to imprisonment for 2 years.”.

(3) Section 53(4), after “other matter”—

Add

“(including any protected product, whether or not it contains any information that is or may be subject to legal professional privilege)”.

(4) Section 53(5), after “the procedure”—

Add

“(including the making of written notes or summaries of protected products)”.

Interception of Communications and Surveillance (Amendment) Bill 2015

Committee Stage

Amendment to be moved by the Honourable James TO Kun-sun

Clause

Amendment Proposed

18 By deleting the clause and substituting —

“18. Section 58A added

After section 58—

Add

“58A. Report to relevant authority: inaccurate information or change in circumstances

(1) This section applies if, while a prescribed authorization is in force, the officer of the department concerned who is for the time being in charge of the interception or covert surveillance concerned—

(a) has reason to suspect that there is a material inaccuracy in the information provided for the purposes of—

(i) the application for the issue of the prescribed authorization made under section 8, 14 or 20, including such an application made orally under section 25;

(ii) the application for the renewal of the prescribed authorization made under section 11 or 17, including such an application made orally under section 25;

(iii) the application for confirmation of the prescribed authorization as provided for in section 23(1) or 26(1); or

- (iv) the application for confirmation of the renewal of the prescribed authorization as provided for in section 26(1); or
- (b) has reason to suspect that there has been a material change in the circumstances on the basis of which—
 - (i) the prescribed authorization was issued under section 9(1)(a), 15(1)(a), 21(1)(a) or 25(4)(a);
 - (ii) the prescribed authorization was renewed under section 12(1)(a), 18(1)(a) or 25(4)(a);
 - (iii) the prescribed authorization was confirmed under section 24(1)(a) or 27(1)(a) or ordered to have effect under section 24(3)(a)(ii) or 27(3)(a)(ii); or
 - (iv) the renewal of the prescribed authorization was confirmed under section 27(1)(a).
- (2) Subject to subsection (3), the officer must—
 - (a) as soon as reasonably practicable after having reason to suspect the matter described in subsection (1)(a)(i) or (b)(i), cause a report on the matter to be provided to the relevant authority by whom the prescribed authorization has been issued;
 - (b) as soon as reasonably practicable after having reason to suspect the matter described in subsection (1)(a)(ii) or (b)(ii), cause a report on the matter to be provided to the relevant authority by whom the prescribed authorization has been renewed;
 - (c) as soon as reasonably practicable after having reason to suspect the matter described in subsection (1)(a)(iii) or (b)(iii), cause a report on the matter to be provided to the relevant authority by whom the prescribed authorization has been confirmed or ordered

to have effect; or

- (d) as soon as reasonably practicable after having reason to suspect the matter described in subsection (1)(a)(iv) or (b)(iv), cause a report on the matter to be provided to the relevant authority by whom the renewal of the prescribed authorization has been confirmed.
- (3) The officer is not required to cause a report on a material change in circumstances to be provided to the relevant authority under subsection (2) if—
 - (a) the change arises from a discontinuance of the interception or covert surveillance concerned or a part of the interception or covert surveillance concerned under section 57(1) or (2) and a report has been provided to the relevant authority under section 57(3); or
 - (b) the change arises from the arrest of the subject of the interception or covert surveillance concerned as referred to in section 58(1) and a report has been provided to the relevant authority under that section.
 - (4) Where the relevant authority receives a report under subsection (2), if the relevant authority considers that the conditions for the continuance of the prescribed authorization concerned or a part of the prescribed authorization concerned under section 3 are not met, the relevant authority must revoke the prescribed authorization or that part of the prescribed authorization.
 - (5) If the prescribed authorization or a part of the prescribed authorization is revoked under subsection (4), the prescribed authorization or that part of the prescribed authorization, despite the relevant duration provision, ceases to have effect from the time of the revocation.
 - (6) If the prescribed authorization is not revoked or only part of the prescribed authorization is

revoked, the relevant authority may do one or both of the following—

- (a) vary any terms or conditions in the prescribed authorization;
 - (b) specify any new conditions in the prescribed authorization that apply to the prescribed authorization itself or to any further authorization or requirement under it (whether granted or imposed under its terms or any provision of this Ordinance).
- (7) If, at the time of the provision of a report to the relevant authority under subsection (2), the relevant authority is no longer holding his or her office or performing the relevant functions of that office—
- (a) without affecting 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 appropriate) and lawfully performing the relevant functions of the office of that relevant authority; and
 - (b) the provisions of this section are to apply accordingly.
- (8) 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).”.”.

Interception of Communications and Surveillance (Amendment) Bill 2015

Committee Stage

Amendment to be moved by the Honourable James TO Kun-sun

Clause

Amendment Proposed

18 By deleting the clause and substituting —

“18. Section 58A added

After section 58—

Add

“58A. Report to relevant authority: inaccurate information or change in circumstances

(1) This section applies if, while a prescribed authorization is in force, the officer of the department concerned who is for the time being in charge of the interception or covert surveillance concerned—

(a) has reason to suspect that there is a material inaccuracy in the information provided for the purposes of—

(i) the application for the issue of the prescribed authorization made under section 8, 14 or 20, including such an application made orally under section 25;

(ii) the application for the renewal of the prescribed authorization made under section 11 or 17, including such an application made orally under section 25;

(iii) the application for confirmation of the prescribed authorization as provided for in section 23(1) or 26(1); or

- (iv) the application for confirmation of the renewal of the prescribed authorization as provided for in section 26(1); or
- (b) has reason to suspect that there has been a material change in the circumstances on the basis of which—
 - (i) the prescribed authorization was issued under section 9(1)(a), 15(1)(a), 21(1)(a) or 25(4)(a);
 - (ii) the prescribed authorization was renewed under section 12(1)(a), 18(1)(a) or 25(4)(a);
 - (iii) the prescribed authorization was confirmed under section 24(1)(a) or 27(1)(a) or ordered to have effect under section 24(3)(a)(ii) or 27(3)(a)(ii); or
 - (iv) the renewal of the prescribed authorization was confirmed under section 27(1)(a).
- (2) Subject to subsection (3), the officer must—
 - (a) as soon as reasonably practicable after having reason to suspect the matter described in subsection (1)(a)(i) or (b)(i), cause a report on the matter to be provided to the relevant authority by whom the prescribed authorization has been issued;
 - (b) as soon as reasonably practicable after having reason to suspect the matter described in subsection (1)(a)(ii) or (b)(ii), cause a report on the matter to be provided to the relevant authority by whom the prescribed authorization has been renewed;
 - (c) as soon as reasonably practicable after having reason to suspect the matter described in subsection (1)(a)(iii) or (b)(iii), cause a report on the matter to be provided to the relevant authority by whom the prescribed authorization has been confirmed or ordered

to have effect; or

- (d) as soon as reasonably practicable after having reason to suspect the matter described in subsection (1)(a)(iv) or (b)(iv), cause a report on the matter to be provided to the relevant authority by whom the renewal of the prescribed authorization has been confirmed.
- (3) The officer is not required to cause a report on a material change in circumstances to be provided to the relevant authority under subsection (2) if—
 - (a) the change arises from a discontinuance of the interception or covert surveillance concerned or a part of the interception or covert surveillance concerned under section 57(1) or (2) and a report has been provided to the relevant authority under section 57(3); or
 - (b) the change arises from the arrest of the subject of the interception or covert surveillance concerned as referred to in section 58(1) and a report has been provided to the relevant authority under that section.
- (4) Where the relevant authority receives a report under subsection (2), if the relevant authority considers that the conditions for the continuance of the prescribed authorization concerned or a part of the prescribed authorization concerned under section 3 are not met, the relevant authority must revoke the prescribed authorization or that part of the prescribed authorization.
- (5) If the prescribed authorization or a part of the prescribed authorization is revoked under subsection (4), the prescribed authorization or that part of the prescribed authorization, despite the relevant duration provision, ceases to have effect from the time of the revocation.
- (6) If the prescribed authorization is not revoked or only part of the prescribed authorization is

revoked, the relevant authority may do one or both of the following—

- (a) vary any terms or conditions in the prescribed authorization;
 - (b) specify any new conditions in the prescribed authorization that apply to the prescribed authorization itself or to any further authorization or requirement under it (whether granted or imposed under its terms or under those terms referred to in section 29(1) to (5), or under section 29(6) or (7) or 30).
- (7) If, at the time of the provision of a report to the relevant authority under subsection (2), the relevant authority is no longer holding his or her office or performing the relevant functions of that office—
- (a) without affecting 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 appropriate) and lawfully performing the relevant functions of the office of that relevant authority; and
 - (b) the provisions of this section are to apply accordingly.
- (8) 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).”.”.

Interception of Communications and Surveillance (Amendment) Bill 2015

Committee Stage

Amendment to be moved by the Honourable James TO Kun-sun

Clause

Amendment Proposed

18 In the proposed section 58A, by adding —

“(5A) If the prescribed authorization or a part of the prescribed authorization is revoked under subsection (4), the department concerned must as soon as reasonably practicable after the revocation remove from the intelligence management system of the department any information obtained pursuant to the prescribed authorization or that part of the prescribed authorization, which has been aggregated and input into the system.”.

Interception of Communications and Surveillance (Amendment) Bill 2015

Committee Stage

Amendments to be moved by the Honourable James TO Kun-sun

Clause

Amendment Proposed

19 By deleting the clause and substituting —

“19. Section 59 amended (safeguards for protected products)

(1) Section 59(1)—

Repeal paragraph (c)

Substitute

“(c) that, except as otherwise provided in subsection (1A), the protected product—

(i) is destroyed as soon as its retention is not necessary for the relevant purpose of the prescribed authorization, unless it is to be or has been provided to the Commissioner in compliance with a requirement imposed under section 53(1)(a) before it is so destroyed; or

(ii) if it has been provided to the Commissioner in compliance with a requirement imposed under section 53(1)(a), is, after it is no longer required by the Commissioner, destroyed as soon as its retention is not necessary—

(A) for the relevant purpose of the prescribed authorization; and

(B) if further requirements are imposed by the Commissioner under section 53(1)(a), for the purpose of enabling compliance with the requirements. ”.

(2) After section 59(1)—

Add

“(1A) Subsection (1B) applies if the protected product consists of information described in section 23(3)(a), 24(3)(b)(i) or (ii), 26(3)(b)(i) or 27(3)(b)(i) or (ii).

(1B) Despite section 23(3)(a) or 26(3)(b)(i) or any requirement in an order made under section 24(3)(b) or 27(3)(b), the head of the department concerned—

(a) must immediately notify the Commissioner of the case;

(b) must make arrangements to ensure that the information is retained; and

(c) must—

(i) if the Commissioner notifies the head of the department that the Commissioner will not require the provision of the information under section 53(1)(a), cause the immediate destruction of the information; or

(ii) if the Commissioner requires the provision of the information under section 53(1)(a)—

(A) provide the information as required; and

(B) cause the immediate destruction of the information when it is no longer required by the Commissioner.

(1C) Any person who destroys the information before the Commissioner notifies the head of the department that the Commissioner will not require the provision of the information under section 53(1)(a) or before the information is no longer required by the Commissioner commits an offence, and is liable to imprisonment for 2 years.” .”.

Interception of Communications and Surveillance (Amendment) Bill 2015

Committee Stage

Amendment to be moved by the Honourable James TO Kun-sun

Clause

Amendment Proposed

20 By deleting the clause and substituting —

“20. Section 65A added

After section 65—

Add

**“65A. Protected products obtained after
revocation of prescribed authorization**

- (1) If a prescribed authorization or a part of a prescribed authorization is revoked under section 24(3)(a)(i), 27(3)(a)(i), 58(2) or 58A(4), the head of the department concerned must make arrangements to ensure that the interception or covert surveillance concerned or the relevant part of the interception or covert surveillance concerned is discontinued as soon as practicable, and to ensure that the actual time of revocation of the prescribed authorization concerned or the relevant part of the prescribed authorization concerned and the actual time of discontinuance of the interception or covert surveillance concerned or the relevant part of the interception or covert surveillance concerned must be reported to the Commissioner.

- (2) Any protected product that is obtained after the prescribed authorization concerned or the relevant part of the prescribed authorization concerned is revoked and before the interception or covert surveillance concerned or the relevant part of the interception or covert surveillance concerned is discontinued in accordance with the arrangements made by the head of the department concerned under subsection (1) (*time gap*) is, for the purposes of this Ordinance, to be regarded as having been obtained pursuant to a prescribed authorization.
- (3) An officer who has notice of the revocation of the prescribed authorization concerned or the relevant part of the prescribed authorization concerned must not use or gain access to any protected product (including its copy) obtained during the time gap for the purposes of investigation or any other purposes including the purpose of intelligence gathering.”.”.

Interception of Communications and Surveillance (Amendment) Bill 2015

Committee Stage

Amendment to be moved by the Honourable James TO Kun-sun

Clause

Amendment Proposed

20 By deleting the clause and substituting —

“20. Section 65A added

After section 65—

Add

**“65A. Protected products obtained after
revocation of prescribed authorization**

- (1) If a prescribed authorization or a part of a prescribed authorization is revoked under section 24(3)(a)(i), 27(3)(a)(i), 58(2) or 58A(4), the head of the department concerned must make arrangements to ensure that the interception or covert surveillance concerned or the relevant part of the interception or covert surveillance concerned is discontinued as soon as practicable, and to ensure that the actual time of revocation of the prescribed authorization concerned or the relevant part of the prescribed authorization concerned and the actual time of discontinuance of the interception or covert surveillance concerned or the relevant part of the interception or covert surveillance concerned must be reported to the Commissioner.

- (2) Any protected product that is obtained after the prescribed authorization concerned or the relevant part of the prescribed authorization concerned is revoked and before the interception or covert surveillance concerned or the relevant part of the interception or covert surveillance concerned is discontinued in accordance with the arrangements made by the head of the department concerned under subsection (1) (*time gap*) is, for the purposes of this Ordinance, to be regarded as having been obtained pursuant to a prescribed authorization.
- (3) An officer who has notice of the revocation of the prescribed authorization concerned or the relevant part of the prescribed authorization concerned must not use or gain access to any protected product (including its copy) obtained during the time gap for the purposes of investigation or any other purposes.
- (4) Any person who contravenes subsection (3) commits an offence and is liable to imprisonment for 2 years.”.”.

Interception of Communications and Surveillance (Amendment) Bill 2015

Committee Stage

Amendment to be moved by the Honourable James TO Kun-sun

Clause

Amendment Proposed

20 In the proposed section 65A, by adding —

“(3) Any information obtained from the protected product mentioned in subsection (2), which has been aggregated and input into the intelligence management system of the department concerned, must be removed from the system as soon as reasonably practicable after the interception or covert surveillance concerned or the relevant part of the interception or covert surveillance concerned is discontinued.”.

Interception of Communications and Surveillance (Amendment) Bill 2015

Committee Stage

Amendments to be moved by the Honourable WONG Yuk-man

<u>Clause</u>	<u>Amendment Proposed</u>
16	By adding— “(2A) Section 57(1)— Repeal “cause” Substitute “order”.”. .”.
16	By adding— “(4A) Section 57(2)(a)— Repeal “cause” Substitute “order”.”. .”.
16	By adding— “(5A) Section 57(2)(b)— Repeal “cause” Substitute “order”.”. .”.
16	By adding— “(6A) Section 57(3)— Repeal “any officer has caused any interception or covert surveillance to

be discontinued, whether under subsection (1) or (2)”

Substitute

“any officer has ordered any interception or covert surveillance to be discontinued, whether under subsection (1) or (2)”.”.