

**Bills Committee on Interception of Communications and Surveillance Bill**

**List of issues awaiting the Administration's response**

(position as at 23 May 2006)

Legal professional privilege

1. to consider the feasibility of providing in the Bill that if in the course of a duly authorised interception of communications or surveillance operation, certain communications were found to be subject to legal professional privilege, the interception or surveillance should stop immediately (*raised at the meeting on 12 April 2006*);
2. to clarify the meaning of "intercept a private communication" in section 186(2) of the Canadian Criminal Code, to consider prohibiting authorisation of interception or surveillance of communications at a lawyer's office or residence unless there were reasonable grounds to believe that the lawyer was a party to an offence, and to provide the draft Committee Stage amendments (*raised at the meeting on 12 April 2006*);
3. to explain how postal interception and covert surveillance products would be used by the prosecutor to carry out his duty to ensure a fair trial in a proceeding, and to provide the draft Committee Stage amendments in respect of use and destruction of products protected by legal professional privilege (*raised at the meeting on 12 April 2006*);

Public Security

4. to consider including in the speech of the Secretary for Security during the resumption of Second Reading debate on the Bill the statement that the public security ground would not be used for political purposes, nor for suppressing the right to freedom of expression or the right of peaceful assembly, and that the Bill was unrelated to the Article 23 of the Basic Law exercise (*raised at the meeting on 2 May 2006*);
5. to provide a copy of the judgment in the case of *Esbester v. UK* and any other cases relevant to the view of the European Commission and Court of Human Rights referred to in paragraph 6 of the Administration's paper entitled "Response to issues raised at the meetings of 3, 6, and 12 April 2006" (*raised at the meeting on 2 May 2006*);

Notification of targets of interception of communications or surveillance

6. to consider establishing a mechanism for notifying targets of interception of communications or surveillance afterwards of the activities conducted under certain circumstances (*raised at the meeting on 19 April 2006*);

Appointment of panel judges

7. to consult the Judiciary on the suggestion that panel judges should be appointed by the Chief Justice instead of the Chief Executive (*raised at the meeting on 19 April 2006*);

Commissioner on Interception of Communications and Surveillance

8. to consider providing in the Bill that the Commissioner on Interception of Communications and Surveillance (the Commissioner) should be appointed by the Chief Executive with the endorsement of the Legislative Council (*raised at the meeting on 25 April 2006*);
9. to consider establishing a mechanism to keep the Legislative Council informed of any disagreement between the Commissioner and the Chief Executive on matters to be excluded from the copy of the Commissioner's annual report to be laid on the table of the Legislative Council under clause 47(5) of the Bill (*raised at the meeting on 25 April 2006*);
10. to consider establishing a committee to review the work of the Commissioner (*raised at the meeting on 25 April 2006*);

Information provided when an application was made for judicial authorisation of interception of communications or surveillance

11. to illustrate, using past cases, the type of information in Schedule 3 to the Bill that would be provided to a panel judge when an application was made for judicial authorisation of interception of communications or surveillance (*raised at the meeting on 25 April 2006*);

Intelligence derived from interception of communications and covert surveillance activities

12. to consider establishing a mechanism for the keeping and destruction of intelligence derived from interception of communications and covert surveillance activities, and requiring an application for the keeping of such intelligence to be submitted to a panel judge (*raised at the meeting on 25 April 2006*);

Statistics broken down by crime and public security on interception of communications and surveillance

13. to reconsider the feasibility of providing the number of cases of interception of communications/ surveillance, broken down by serious crime and public security (*raised at the meeting on 25 April 2006*); and

Existing mechanism for the authorisation and monitoring of undercover operations not using devices by law enforcement agencies

14. to provide information on the existing mechanism for the authorisation and monitoring of undercover operations not using devices by law enforcement agencies, and the role of the Department of Justice, if any, in the mechanism (*raised at the meeting on 17 May 2006*).