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立法會CB(2)275/15-16(03)號文件(第2次修訂本)

LC Paper No. CB(2)275/15-16(03) (2nd Revised)

香港中區

立法會道一號

立法會

2015年截取通訊及監察(修訂)條例草案委員會主席

葉國謙議員

葉主席:

提出修訂第 65A 條-修訂版本

就《截取通訊及監察(修訂)條例草案》(“《條例草案》”)新加入的第 65A 條，關於在撤銷訂明授權後但在終止有關截取或秘密監察之前的時間差距之內，所取得的任何受保護成果如何處理的問題，本人早前已向委員會提出修訂建議，以規定執法機關須向專員呈報撤銷有關訂明授權的時間及終止有關的截取或秘密監察行動的時間，以及確保在上述時間差距之內取得的受保護成果不得被使用或接觸。

政府早前向委員會提交上述建議的《實務守則》字眼，本人謹此修訂早前的建議修訂文本，以使法律條文反映《實務守則》的規範，方便有關人員遵從。截取及秘密監察的行為會嚴重影響私隱，故必須在獲得授權下才可進行，取得的成果亦受保護。因此，在撤銷有關授權後取得的成果應受嚴格規限不被使用或接觸，不論是作調查或其他目的。所以，有關的規限應在主體法例中訂明，以更清晰及明確地提出其重要性，更能保障私隱。隨附經修訂的建議修訂條文，詳見附件一。

正如早前提出的修訂建議，修訂文本有兩個版本，版本 A 是沒有刑事罰則，版本 B 是有最高可判監禁 2 年的刑事罰則。這罰則與現行《電訊條例》第 24 條的可處監禁年期相同，該條訂明電訊人員如故意不發送任何訊息、或故意截取或扣留或阻延任何訊息，一經循簡易程序定罪，可處第 4 級罰款及監禁 2 年。

明知不應但仍使用撤銷授權後取得的截取或秘密監察成果，是明顯違反本條例的目的，而且政府容許有關的時間差距有一小時之多，違規取用受保護成果對保障私隱有很嚴重的影響，故應訂明相應的刑事罰則，加以防止及懲處違規情況。

如有查詢，請聯絡鄭慕貞女士，電話：28699530。謝謝！

立法會議員涂謹申謹啟

2015 年 12 月 31 日

附件:建議修訂草擬文本

Interception of Communications and Surveillance (Amendment) Bill 2015

Committee Stage

Amendments to be moved by the Hon. 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 the time of revocation of the prescribed authorization concerned or the relevant part of the prescribed authorization concerned and the 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) is, for the purposes of this Ordinance, to be regarded as having been obtained pursuant to a prescribed authorization.
- (3) An officer when has notice of the revocation of the prescribed authorization concerned or the relevant part of the prescribed authorization concerned shall not use or gain access to any protected products (including its copy) obtained during the time gap (between the revocation of the prescribed authorization concerned or the relevant part of the prescribed authorization concerned and the actual discontinuance of the interception or covert surveillance concerned or the relevant part of the interception or covert surveillance concerned) for the purpose of investigation or any other purpose.”.”.

《2015 年截取通訊及監察(修訂)條例草案》

委員會審議階段

由涂謹申議員動議的修訂

條次

建議修正案

20 刪去該條而代以 —

“20. 加入第 65A 條

在第 65 條之後 ——

加入

“65A. 在訂明授權被撤銷後取得的受保護成果

- (1) 如某訂明授權或其某部分根據第 24(3)(a)(i)、27(3)(a)(i)、58(2) 或 58A(4) 條被撤銷，有關部門的首長須作出安排，以確保有關截取或秘密監察或其有關部分，於切實可行範圍內，盡快終止，並確保撤銷有關訂明授權或其有關部分的時間，以及終止有關截取或秘密監察或其有關部分的時間，必須呈報專員。
- (2) 任何受保護成果，如在有關訂明授權或其有關部分被撤銷後，但在有關截取或秘密監察或其有關部分按照有關部門的首長根據第(1) 款作出的安排而終止前取得，則就本條例而言，該成果須視為是依據訂明授權取得的。
- (3) 任何人員一俟收到撤銷有關訂明授權或其有關部分的通知，便不得使用或接觸在時間差距(由撤銷有關訂明授權或其有關部分至有關截取或秘密監察或其有關部分實際終止之前)之內，取得的任何受保護成果(包括其副本)，不論是作調查或其他目的。”。

Interception of Communications and Surveillance (Amendment) Bill 2015

Committee Stage

Amendments to be moved by the Hon. James To Kun-sun

Clause

Amendment Proposed

20 By deleting the clause and substituting —

“20. Section 65A added

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- (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) is, for the purposes of this Ordinance, to be regarded as having been obtained pursuant to a prescribed authorization.
- (3) An officer when has notice of the revocation of the prescribed authorization concerned or the relevant part of the prescribed authorization concerned shall not use or gain access to any protected products (including its copy) obtained during the time gap (between the revocation of the prescribed authorization concerned or the relevant part of the prescribed authorization concerned and the actual discontinuance of the interception or covert surveillance concerned or the relevant part of the interception or covert surveillance concerned) for the purpose of investigation or any other purpose.
- (4) Contravention of subsection (3) shall be an offence punishable with a maximum penalty of 2 years imprisonment. ”.”.

《2015 年截取通訊及監察(修訂)條例草案》

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- (2) 任何受保護成果，如在有關訂明授權或其有關部分被撤銷後，但在有關截取或秘密監察或其有關部分按照有關部門的首長根據第(1) 款作出的安排而終止前取得，則就本條例而言，該成果須視為是依據訂明授權取得的。
- (3) 任何人員一俟收到撤銷有關訂明授權或其有關部分的通知，便不得使用或接觸在時間差距(由撤銷有關訂明授權或其有關部分至有關截取或秘密監察或其有關部分實際終止之前)之內，取得的任何受保護成果(包括其副本)，不論是作調查或其他目的。
- (4) 違反第(3)款的規定即屬犯罪，最高可被判監 2 年。”。



香港中區
立法會道一號
立法會
2015年截取通訊及監察(修訂)條例草案委員會主席
葉國謙議員

立法會CB(2)275/15-16(03)號文件(修訂本)
LC Paper No. CB(2)275/15-16(03) (Revised)

葉主席:

提出修訂新加的第 65A 條

在較早前的草案委員會會議上，委員會曾討論《截取通訊及監察(修訂)條例草案》(“《條例草案》”)新加入的第 65A 條，關於在撤銷訂明授權後但在終止有關截取或秘密監察之前的時間差距之內，所取得的任何受保護成果如何處理的問題，本人會提出修訂，以達致以下目的:-

1. 政府執法機關在收到撤銷訂明授權後，須盡快終止有關的截取或秘密監察行動，並須向專員報告終止行動的時間和負責人員收到撤銷通知的時間。
2. 而在撤銷訂明授權和終止行動之間的時間差距內，所取得的受保護成果不得被使用或接觸。

上述的建議與政府擬在其《實務守則》對執法人員的要求是一致的，本人提出在主題法例中訂明，是要更清晰及明確地提出這樣做的重要性，使更能保障私隱，而如果當中涉及任何應受法律專業保密權利保護的成果，則更能加以保護。**草擬的修訂條文詳見附件一。**

另外，就上述的第 2 點，本人附加另一版本，訂明違反該條文規定即屬犯罪，可判處最高監禁 2 年。這刑罰與現行《電訊條例》第 24 條的可處監禁年期相同，該條訂明電訊人員如故意不發送任何訊息、或故意截取或扣留或阻延任何訊息，一經循簡易程序定罪，可處第 4 級罰款及監禁 2 年。

如有查詢，請聯絡鄭慕貞女士，電話：28699530。謝謝！

立法會議員涂謹申謹啟

2015 年 11 月 16 日
附件：修訂建議

Revised Version A
(Without Penalty)

Appendix I

Interception of Communications and Surveillance (Amendment) Bill 2015

Committee Stage

Amendments to be moved by the Hon. 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 the times of the officer in charge of the interception or covert surveillance concerned has notice of the revocation and of discontinuance shall 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) is, for the purposes of this Ordinance, to be regarded as having been obtained pursuant to a prescribed authorization.

- (3) The officer in charge of the interception or covert surveillance concerned when has notice of the revocation of the prescribed authorization by the relevant authority shall not use (for investigative operations) or gain access to any protected product obtained after the revocation of the prescribed authorization concerned.”.”.

《2015 年截取通訊及監察(修訂)條例草案》

委員會審議階段

由涂謹申議員動議的修訂

條次

建議修正案

20 刪去該條而代以 —

“20. 加入第 65A 條

在第 65 條之後 ——

加入

“65A. 在訂明授權被撤銷後取得的受保護成果

- (1) 如某訂明授權或其某部分根據第 24(3)(a)(i)、27(3)(a)(i)、58(2) 或 58A(4) 條被撤銷，有關部門的首長須作出安排，以確保有關截取或秘密監察或其有關部分，於切實可行範圍內，盡快終止，而截取或秘密監察的負責人員收到撤銷的通知，以及終止行動的時間，須呈報專員。
- (2) 任何受保護成果，如在有關訂明授權或其有關部分被撤銷後，但在有關截取或秘密監察或其有關部分按照有關部門的首長根據第(1) 款作出的安排而終止前取得，則就本條例而言，該成果須視為是依據訂明授權取得的。
- (3) 截取或秘密監察的負責人員一俟收到有關當局撤銷訂明授權的通知，便不得使用(以作調查行動)或接觸在訂明授權撤銷後取得的受保護成果。”。

Version B
(with penalty)

Appendix I

Interception of Communications and Surveillance (Amendment) Bill 2015

Committee Stage

Amendments to be moved by the Hon. 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
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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) is, for the purposes of this Ordinance, to be regarded as having been obtained pursuant to a prescribed authorization.

- (3) The officer in charge of the interception or covert surveillance concerned when has notice of the revocation of the prescribed authorization by the relevant authority shall not use (for investigative operations) or gain access to any protected product obtained after the revocation of the prescribed authorization concerned.
- (4) Contravention of subsection (3) shall be an offence punishable with a maximum penalty of 2 years imprisonment. ”.”.

《2015 年截取通訊及監察(修訂)條例草案》

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建議修正案

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- (4) 違反第(3)款的規定即屬犯罪，最高可被判監 2 年。”

。 ” 。



香港中區

立法會道一號

立法會

2015 年截取通訊及監察(修訂)條例草案委員會主席

葉國謙議員

立法會CB(2)275/15-16(03)號文件

LC Paper No. CB(2)275/15-16(03)

葉主席：

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在較早前的草案委員會會議上，委員會曾討論《截取通訊及監察(修訂)條例草案》(“《條例草案》”)新加入的第 65A 條，關於在撤銷訂明授權後但在終止有關截取或秘密監察之前的時間差距之內，所取得的任何受保護成果如何處理的問題，本人會提出修訂，以達致以下目的：-

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上述的建議與政府擬在其《實務守則》對執法人員的要求是一致的，本人提出在主題法例中訂明，是要更清晰及明確地提出這樣做的重要性，使更能保障私隱，而如果當中涉及任何應受法律專業保密權利保護的成果，則更能加以保護。修訂條文詳見附件一。

如有查詢，請聯絡鄭慕貞女士，電話：28699530。謝謝！

立法會議員涂謹申謹啟

2015 年 11 月 13 日

附件：修訂建議

Interception of Communications and Surveillance (Amendment) Bill 2015

Committee Stage

Amendments to be moved by the Hon. James To Kun-sun

<u>Clause</u>	<u>Amendment Proposed</u>
20	<p>By deleting the clause and substituting —</p> <p>“20. Section 65A added</p> <p>After section 65—</p> <p>Add</p> <p>“65A. Protected products obtained after revocation of prescribed authorization</p> <p>(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 the time of discontinuance shall be reported to the Commissioner.</p> <p>(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) is, for the purposes of this Ordinance, to be regarded as having been obtained pursuant to</p> ”

a prescribed authorization and the product shall not be used or accessed during the time gap between the revocation of the prescribed authorization and the actual discontinuance of the operation.”.”.

《2015 年截取通訊及監察(修訂)條例草案》

委員會審議階段

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“65A. 在訂明授權被撤銷後取得的受保護成果

- (1) 如某訂明授權或其某部分根據第 24(3)(a)(i)、27(3)(a)(i)、58(2) 或 58A(4) 條被撤銷，有關部門的首長須作出安排，以確保有關截取或秘密監察或其有關部分，於切實可行範圍內，盡快終止，而終止行動的時間，須呈報專員。
- (2) 任何受保護成果，如在有關訂明授權或其有關部分被撤銷後，但在有關截取或秘密監察或其有關部分按照有關部門的首長根據第(1) 款作出的安排而終止前取得，則就本條例而言，該成果須視為是依據訂明授權取得的，而在由撤銷訂明授權至行動實際終止之前的時間差距之內，該成果不得被使用或接觸。”。