



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)768/15-16(02)號文件
LC Paper No. CB(2)768/15-16(02)

葉主席:

提出修訂新加的第58A條

就《截取通訊及監察(修訂)條例草案》(“《條例草案》”)建議新加的第58A條，關於向有關當局提交報告，處理資料不準確或情況有變化的情況。

政府的建議是當負責截取或秘密監察的人員「知悉」有具關鍵性的不準確之處或出現關鍵性變化時，該人員便須於合理切實可行範圍內，盡快安排向有關當局，提供相關的報告，以讓有關當局決定是否需要撤銷截取通訊或秘密監察的行動。但有關人員只需要在「知悉」之時才這樣做，這明顯保障不足。

本人現提出修訂建議，規定有關人員在「有合理懷疑」之時，便須於合理切實可行範圍內，盡快安排向有關當局，提供相關的報告，以更能保障私穩。建議修訂條文詳見附件一。

顯而易見「有合理懷疑」的要求，較「知悉」的要求，程度上有不同，前者可於較早時間，在具關鍵性的不準確或變化出現的初階，就能合理地啟動「提供報告」的程序，使能盡快停止不合理的截取通訊和秘密監察行為，更能保障私隱免受無理侵犯。

修訂文本有兩個版本，版本A是根據第58A(6)，處理「進一步的授權施加的新條件」時，是根據授權的條款或本條例的任何條文而批予的。版本B則明確訂明，是根據授權的條款或本條例的第29(1)至(5)所提述的條款，以及第29(6)或(7)或第30條而批予或施加的。

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

2016年1月11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

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 reasonable suspicion of 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 reasonable suspicion of

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 reasonable suspicion of 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 reasonable suspicion of 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).”.”.

《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

18 刪去該條而代以 —

“18. 加入第58A 條

在第 58 條之後——

加入

“58A. 向有關當局提供報告：資料不準確或情況有變化

(1) 本條在以下情況下適用：在某訂明授權有效的期間內，有關部門在當其時負責有關截取或秘密監察的人員——

(a) 有理由懷疑在為以下申請而提供的資料中，有具關鍵性的不準確之處——

(i) 根據第 8、14 或 20 條提出的尋求發出該授權的申請，包括根據第 25 條用口頭提出的上述申請；

(ii) 根據第 11 或 17 條提出的尋求將該授權續期的申請，包括根據第 25 條用口頭提出的上述申請；

(iii) 按第 23(1) 或 26(1) 條的規定提出的尋求確認該授權的申請；或

(iv) 按第 26(1) 條的規定提出的尋求確認該授權的續期的申請；或

(b) 有理由懷疑——

(i) 作為根據第 9(1)(a)、15(1)(a)、21(1)(a) 或 25(4)(a) 條發出該

授權的基礎的情況，出現關鍵性變化；

(ii) 作為根據第12(1)(a)、18(1)(a)或25(4)(a)條將該授權續期的基礎的情況，出現關鍵性變化；

(iii) 作為根據第24(1)(a)或27(1)(a)條確認該授權的基礎的情況，或作為根據第24(3)(a)(ii)或27(3)(a)(ii)條命令該授權有效的基礎的情況，出現關鍵性變化；或

(iv) 作為根據第27(1)(a)條確認該授權的續期的基礎的情況，出現關鍵性變化。

(2) 除第(3)款另有規定外，上述人員須——

(a) 在第(1)(a)(i)或(b)(i)款描述的事宜受到合理懷疑後，於合理地切實可行範圍內，盡快安排向發出上述訂明授權的有關當局，提供一份關於該事宜的報告；

(b) 在第(1)(a)(ii)或(b)(ii)款描述的事宜受到合理懷疑後，於合理地切實可行範圍內，盡快安排向將上述訂明授權續期的有關當局，提供一份關於該事宜的報告；

(c) 在第(1)(a)(iii)或(b)(iii)款描述的事宜受到合理懷疑後，於合理地切實可行範圍內，盡快安排向確認上述訂明授權或命令該授權有效的有關當局，提供一份關於該事宜的報告；或

(d) 在第(1)(a)(iv)或(b)(iv)款描述的事宜受到合理懷疑後，於合理地切實可行範圍內，盡快安排向確認上述訂明授權的續期的有關當局，提供一份關於該事宜的報告。

(3) 凡有關情況出現關鍵性變化，如——

(a) 該變化是因有關截取或秘密監察或

其某部分根據第57(1) 或(2) 條終止而產生的，且已有報告根據第57(3) 條提供予有關當局；或

- (b) 該變化是因第58(1) 條所提述的有關截取或秘密監察的目標人物被逮捕而產生的，且已有報告根據該條提供予有關當局，

則上述人員無須根據第(2) 款安排向有關當局提供關於該變化的報告。

- (4) 凡有關當局接獲第(2) 款所指的報告，如該當局認為第3 條所指的、讓有關訂明授權或其某部分持續有效的先決條件未獲符合，該當局須撤銷該授權或該部分。
- (5) 如訂明授權或其某部分根據第(4) 款被撤銷，則儘管有有關時限條文的規定，該授權或該部分自被撤銷之時起失效。
- (6) 如訂明授權沒有被撤銷，或只有部分被撤銷，有關當局可行使以下一項或兩項權力——
- (a) 更改該授權的任何條款或條件；
- (b) 在該授權中指明適用於該授權本身或在該授權下的任何進一步的授權或規定(不論是根據該授權的條款或本條例的任何條文而批予或施加的) 的任何新條件。
- (7) 如有關當局在有關人員根據第(2) 款向其提供報告時，不再擔任其職位或不再執行其職位的有關職能，則——
- (a) 在不影響《釋義及通則條例》(第1 章) 第54 條的原則下，在該款中提述有關當局，包括在當其時獲委任為小組法官或授權人員(視何者屬適當而定) 並合法地執行該當局的職位的有關職能的人；及
- (b) 本條的條文據此適用。
- (8) 在本條中——

有關時限條文 (relevant duration provision)

指第 10(b)、13(b)、16(b)、19(b) 或 22(1)(b)

條(視何者適用而定)。”。

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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 reasonable suspicion of 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 reasonable suspicion of

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 reasonable suspicion of 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 reasonable suspicion of 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 referred to in section 29(1) to (5) as well as any further authorization granted under section 29(6) or (7) or section 30 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).”.”.

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(1) 本條在以下情況下適用：在某訂明授權有效的期間內，有關部門在當其時負責有關截取或秘密監察的人員——

(a) 有理由懷疑在為以下申請而提供的資料中，有具關鍵性的不準確之處——

(i) 根據第 8、14 或 20 條提出的尋求發出該授權的申請，包括根據第 25 條用口頭提出的上述申請；

(ii) 根據第 11 或 17 條提出的尋求將該授權續期的申請，包括根據第 25 條用口頭提出的上述申請；

(iii) 按第 23(1) 或 26(1) 條的規定提出的尋求確認該授權的申請；或

(iv) 按第 26(1) 條的規定提出的尋求確認該授權的續期的申請；或

(b) 有理由懷疑——

(i) 作為根據第 9(1)(a)、15(1)(a)、21(1)(a) 或 25(4)(a) 條發出該

授權的基礎的情況，出現關鍵性變化；

(ii) 作為根據第12(1)(a)、18(1)(a)或25(4)(a)條將該授權續期的基礎的情況，出現關鍵性變化；

(iii) 作為根據第24(1)(a)或27(1)(a)條確認該授權的基礎的情況，或作為根據第24(3)(a)(ii)或27(3)(a)(ii)條命令該授權有效的基礎的情況，出現關鍵性變化；或

(iv) 作為根據第27(1)(a)條確認該授權的續期的基礎的情況，出現關鍵性變化。

(2) 除第(3)款另有規定外，上述人員須——

(a) 在第(1)(a)(i)或(b)(i)款描述的事宜受到合理懷疑後，於合理地切實可行範圍內，盡快安排向發出上述訂明授權的有關當局，提供一份關於該事宜的報告；

(b) 在第(1)(a)(ii)或(b)(ii)款描述的事宜受到合理懷疑後，於合理地切實可行範圍內，盡快安排向將上述訂明授權續期的有關當局，提供一份關於該事宜的報告；

(c) 在第(1)(a)(iii)或(b)(iii)款描述的事宜受到合理懷疑後，於合理地切實可行範圍內，盡快安排向確認上述訂明授權或命令該授權有效的有關當局，提供一份關於該事宜的報告；或

(d) 在第(1)(a)(iv)或(b)(iv)款描述的事宜受到合理懷疑後，於合理地切實可行範圍內，盡快安排向確認上述訂明授權的續期的有關當局，提供一份關於該事宜的報告。

(3) 凡有關情況出現關鍵性變化，如——

(a) 該變化是因有關截取或秘密監察或

其某部分根據第57(1) 或(2) 條終止而產生的，且已有報告根據第57(3) 條提供予有關當局；或

- (b) 該變化是因第58(1) 條所提述的有關截取或秘密監察的目標人物被逮捕而產生的，且已有報告根據該條提供予有關當局，

則上述人員無須根據第(2) 款安排向有關當局提供關於該變化的報告。

- (4) 凡有關當局接獲第(2) 款所指的報告，如該當局認為第3 條所指的、讓有關訂明授權或其某部分持續有效的先決條件未獲符合，該當局須撤銷該授權或該部分。
- (5) 如訂明授權或其某部分根據第(4) 款被撤銷，則儘管有有關時限條文的規定，該授權或該部分自被撤銷之時起失效。
- (6) 如訂明授權沒有被撤銷，或只有部分被撤銷，有關當局可行使以下一項或兩項權力——
- (a) 更改該授權的任何條款或條件；
- (b) 在該授權中指明適用於該授權本身或在該授權下的任何進一步的授權或規定(不論是根據該授權的條款或本條例第29(1)至(5)條所提述的條款，以及根據第29(6)或(7) 條或第30條而批予或施加的) 的任何新條件。
- (7) 如有關當局在有關人員根據第(2) 款向其提供報告時，不再擔任其職位或不再執行其職位的有關職能，則——
- (a) 在不影響《釋義及通則條例》(第1 章) 第54 條的原則下，在該款中提述有關當局，包括在當其時獲委任為小組法官或授權人員(視何者屬適當而定) 並合法地執行該當局的職位的有關職能的人；及
- (b) 本條的條文據此適用。
- (8) 在本條中——

有關時限條文 (relevant duration provision)

指第 10(b)、13(b)、16(b)、19(b) 或 22(1)(b)
條(視何者適用而定)。”。