

立法會
Legislative Council

LC Paper No. CB(2)846/15-16
(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, 4 January 2016, at 2:30 pm
in Conference Room 1 of the Legislative Council Complex

- Members present** : Hon IP Kwok-him, GBS, JP (Chairman)
Hon YIU Si-wing, BBS (Deputy 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 WONG Kwok-kin, SBS
Hon Paul TSE Wai-chun, JP
Hon Claudia MO
Hon NG Leung-sing, SBS, JP
Hon Frankie YICK Chi-ming, JP
Hon MA Fung-kwok, SBS, JP
Hon KWOK Wai-keung
Hon Dennis KWOK
Hon SIN Chung-kai, SBS, JP
Dr Hon Elizabeth QUAT, JP
Dr Hon CHIANG Lai-wan, JP
Hon CHUNG Kwok-pan
Hon Tony TSE Wai-chuen, BBS
- Members absent** : Hon WONG Yuk-man
Hon Charles Peter MOK, JP
Hon LEUNG Che-cheung, BBS, MH, JP
Hon Christopher CHUNG Shu-kun, BBS, MH, JP

Public Officers : Item I
attending

Ms Mimi LEE Mei-mei, JP
Deputy Secretary for Security 1

Mr Andrew TSANG Yue-tung
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) consider introducing consequential Committee stage amendments to provide expressly in sections 23, 24, 26 and 27 of the Interception of Communications and

Surveillance Ordinance (Cap. 589) ("ICSO") that the immediate destruction requirements under the sections would be subject to section 59 of ICSO; and

- (b) explain whether information obtained in interception or covert surveillance operations of which the prescribed authorization had been revoked would be gathered as intelligence.

II. Any other business

3. The Chairman concluded that, pending the Administration's provision of written response to the above issues, the Bills Committee had completed scrutiny of the Bill. He said that a further meeting with the Administration might be held on 18 January 2016 at 4:30 pm, if necessary, after the Administration's provision of its written response.

4. Members noted that the Administration intended to resume the Second Reading debate on the Bill at the Council meeting of 2 March 2016 or earlier. Members also noted that the deadline for giving notice for moving Committee stage amendments to the Bill would be 22 February 2016 and a report on the deliberations of the Bills Committee would be submitted to the House Committee on 5 February 2016.

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

Council Business Division 2
Legislative Council Secretariat
5 February 2016

**Proceedings of meeting of the Bills Committee on
Interception of Communications and Surveillance (Amendment) Bill 2015
held on Monday, 4 January 2016, at 2:30 pm
in Conference Room 1 of the Legislative Council Complex**

Time marker	Speaker(s)	Subject(s)	Action Required
000000 - 000304	Chairman	Opening remarks	
000305 - 002303	Chairman Mr James TO Admin Ms Claudia MO	<p>Discussion of the Administration's response to Mr James TO's proposed Committee stage amendments ("CSAs") to clause 20 (paragraphs 15 to 18 of Appendix (II)(b) to LC Paper No. CB(2)443/15-16(01)).</p> <p>Ms Claudia MO's concerns regarding whether interception of communications by persons other than law enforcement officers would be regulated.</p> <p>Mr James TO's concern that there was no criminal sanction on law enforcement officers who gained access to or used protected product obtained after the revocation of the prescribed authorization concerned.</p> <p>Administration's response that -</p> <p>(a) it was the Administration's position that the question of whether criminal sanctions should be introduced under the Interception of Communications and Surveillance Ordinance ("ICSO") (Cap. 589) had to be considered holistically alongside the relevant policy bureau's deliberation on the Law Reform Commission ("LRC")'s recommendations regarding the interception or covert surveillance conducted by persons who were not public officers. In this regard, the relevant policy bureau had studied the reports by LRC on "Regulating the Interception of Communications" and "The Regulation of Covert Surveillance". The relevant policy bureau was still considering the way forward. Pending the outcome of the policy bureau's deliberation, the Administration had no plan to consider introducing criminal offences under ICSO; and</p>	

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		<p>(b) law enforcement officers were already under a statutory duty to comply with the relevant requirements, and their compliance with ICSO and the Code of Practice ("CoP") was subject to stringent oversight by the Commissioner on Interception of Communications and Surveillance ("the Commissioner"). Officers in default were subject to disciplinary actions. In very serious cases with wilful intent, an officer might even be prosecuted for the common law offence of misconduct in public office.</p>	
002304 - 002333	Chairman Mr James TO	<p>Discussion of the Administration's response to Mr James TO's proposed CSAs to clauses 6(2), 8(2), 16(10) and 17(5) and addition of new clauses 21 and 22 (paragraphs 19 to 24 of Appendix (II)(b) to LC Paper No. CB(2)443/15-16(01)).</p>	
002334 - 004126	Chairman Admin Mr James TO SALA1 Ms Claudia MO Mr Dennis KWOK	<p>Discussion of the Administration's further proposed CSAs (paragraphs 1 to 5 of the Annex to LC Paper No. CB(2)443/15-16(01)).</p> <p>SALA1's view that consideration might be given to introducing consequential amendments to provide expressly in sections 23, 24, 26 and 27 of ICSO that the immediate destruction requirements under the sections were subject to section 59.</p> <p>Views of Mr James TO and Ms Claudia MO that such consequential amendments should be introduced.</p> <p>Administration's response that -</p> <p>(a) Implementation of sections 23, 24, 26 and 27 involved heads of law enforcement agencies ("LEAs") and panel judges. They had been consulted on the Administration's further proposed CSAs to section 59 and were fully aware of the effect of the CSAs on the above sections. The proposed consequential amendments were therefore unnecessary; and</p>	

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		<p>(b) CoP would be revised to remind LEAs to observe the new requirement that the immediate destruction of protected products under sections 23(3)(a), 24(3)(b), 26(3)(b) and 27(3)(b) of ICSO was subject to the Commissioner's power of checking under the proposed section 59.</p> <p>Mr Dennis KWOK's question regarding whether the requirements in his proposed CSAs could be set out in CoP.</p> <p>Administration's response that the amendment proposed by Mr Dennis KWOK was related to application for a court order under section 103 of the Criminal Procedure Ordinance (Cap. 221) to obtain information or data held by a telecommunications service provider or any other person. Under section 63 of ICSO, CoP was issued for the purpose of providing practical guidance to officers of LEAs in respect of matters provided for in ICSO. Since the matters proposed by Mr Dennis KWOK did not fall within the scope of ICSO, it would not be appropriate to incorporate them in CoP.</p> <p>The Administration was requested to consider introducing consequential CSAs to provide expressly in sections 23, 24, 26 and 27 of ICSO that the immediate destruction requirements under the sections would be subject to section 59 of ICSO.</p>	<p>Admin</p>
004127 - 005817	<p>Chairman Admin Mr James TO SALA1 Ms Claudia MO</p>	<p>Discussion of the Administration's response to other issues raised at the meetings on 9 and 16 November 2015 (paragraphs 1 to 3 of Appendix III to LC Paper No. CB(2)443/15-16(01)).</p> <p>Mr James TO's view that the phrase "becomes aware" in the proposed new section 58A of ICSO should be amended to "knows".</p> <p>Ms Claudia MO's view that there was a difference between the meaning of "becomes aware" and its Chinese rendition "知悉" in the proposed new section 58A of ICSO.</p>	

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		<p>Administration's response that -</p> <p>(a) the expression "becomes aware" had been used in sections 57 and 58 of ICSO. For the purpose of sections 57 and 58 and the proposed new section 58A, the Administration did not consider that there was any material difference between the two expressions in terms of achieving the policy intent. The use of "<i>becomes aware</i>" in the current context had the effect of emphasizing that the officer came to know that the relevant circumstances or information existed from a certain point of time. Section 58 was about reporting to the relevant authority following arrest of the subject. Operationally, when section 58 was invoked, the officer concerned would verify the information pertinent to the arrest using the established internal checking system before he provided the relevant authority with a report under section 58(1); and</p> <p>(b) as regards the Chinese rendition of "becomes aware", the expression "知悉" had been used in various ordinances. Recent examples could be found in section 8(1) and (2) of the Lifts and Escalators (General) Regulation (Cap. 618, sub. leg. A) and section 7(1) and (2) of Schedule 7 to the Competition Ordinance (Cap. 619).</p> <p>Mr James TO's question and SALA1's reply regarding the use of the expressions "becomes aware" and "knows" in local legislation.</p> <p>Mr James TO's remark that he would consider proposing CSAs to amend the phrase "becomes aware" in the proposed new section 58A of ICSO along the line of "reasonably suspect".</p>	

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005818 - 010024	Chairman Admin Mr James TO	<p>Discussion of the Administration's response to other issues raised at the meetings on 9 and 16 November 2015 (paragraphs 4 to 7 of Appendix III to LC Paper No. CB(2)443/15-16(01)).</p> <p>Mr James TO's remark that criminal sanctions should be introduced under ICSO, regardless of whether criminal sanctions would be imposed on non-public officers conducting similar operations or activities.</p>	
010025 - 010127	Chairman Admin	<p>Discussion of the Administration's response to other issues raised at the meetings on 9 and 16 November 2015 (paragraph 8 of Appendix III to LC Paper No. CB(2)443/15-16(01)).</p>	
010128 - 010747	Chairman Admin Mr James TO	<p>Discussion of the Administration's response to other issues raised at the meetings on 9 and 16 November 2015 (paragraphs 9 to 11 of Appendix III to LC Paper No. CB(2)443/15-16(01)).</p> <p>Mr James TO's remark that -</p> <p>(a) the non-retrieval of a surveillance device after expiry of the prescribed authorization concerned should be approved by a panel judge instead of being endorsed by an officer at directorate rank; and</p> <p>(b) he would consider proposing CSAs to require the non-retrieval of a surveillance device after expiry of the prescribed authorization concerned to be approved by a panel judge.</p>	
010748 - 012417	Chairman Admin Mr James TO	<p>Discussion of the Administration's response to other issues raised at the meetings on 9 and 16 November 2015 (paragraphs 12 to 13 of Appendix III to LC Paper No. CB(2)443/15-16(01)).</p> <p>Mr James TO's view that intelligence derived from interception of communications or covert surveillance operations of which the prescribed authorization had been revoked on</p>	

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		<p>the ground of material inaccuracy in the information provided in the application concerned should be destroyed immediately after the revocation.</p> <p>Administration's response that -</p> <p>(a) LEAs had strict internal guidelines requiring that intelligence must be gathered through legitimate means, and the keeping of intelligence in the database was regularly reviewed; and</p> <p>(b) law enforcement officers were not allowed to gain access to or use products obtained during the time gap between revocation of a prescribed authorization and the actual discontinuance of operation.</p> <p>The Administration was requested to explain whether information obtained in interception or covert surveillance operations of which the prescribed authorization had been revoked would be gathered as intelligence.</p> <p>Mr James TO's remark that he would consider proposing CSAs to require the destruction of intelligence derived from interception of communications or covert surveillance operations of which the prescribed authorization had been revoked on the ground of material inaccuracy in the information provided in the application concerned.</p>	Admin
012418 - 012704	Chairman Admin Mr James TO	Discussion of the Administration's response to other issues raised at the meetings on 9 and 16 November 2015 (paragraph 14 of Appendix III to LC Paper No. CB(2)443/15-16(01)).	
012705 - 013807	Chairman Admin Mr Dennis KWOK Mr James TO	<p>Discussion of the Administration's response to issues raised at the meeting on 15 December 2015 (LC Paper No. CB(2)546/15-16(01)).</p> <p>Mr Dennis KWOK's question and the Administration's response regarding whether the submission of report on discontinuance of operation under section 57 of ICSO was subject to any time limit.</p>	

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		<p>Mr James TO's remark that he would consider proposing CSAs to expand the scope of section 58(1) of ICSO to cover other compulsory measures such as search of premises.</p>	
<p>013808 - 014859</p>	<p>Chairman Mr James TO Admin</p>	<p>Discussion of Mr James TO's proposed CSAs to new section 38A of ICSO (LC Paper No. CB(2)561/15-16(01)) and the Administration's response tabled at the meeting.</p> <p>Mr James TO's explanation of his proposed CSAs to new section 38A of ICSO and view that the non-retrieval of a surveillance device after expiry of the prescribed authorization concerned should be approved by a panel judge.</p> <p>Administration's remark that -</p> <ul style="list-style-type: none"> (a) CoP had already stipulated that as a matter of policy, surveillance devices should not be left in target premises after the completion or discontinuance of covert surveillance operation; (b) any decision of not applying for a device retrieval warrant where the device had not been retrieved after the expiry of an authorization should be endorsed by an officer at the directorate rank and a report on the decision should be submitted to the Commissioner; (c) under section 52(1) of ICSO, if, in the course of performing any of his functions, the Commissioner considered that any arrangements made by an LEA should be changed to better carry out the objects of ICSO or the provisions of CoP, he might make such recommendations to the head of the LEA; and (d) since the commencement of ICSO, there had not been any non-retrieval of surveillance device after expiry of the prescribed authorization concerned. 	

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014900 - 015134	Chairman Mr James TO Admin	<p>Discussion of Mr James TO's proposed CSAs to section 53 of ICSO (LC Paper No. CB(2)561/15-16(02)) and the Administration's response tabled at the meeting.</p> <p>Mr James TO's explanation of his proposed CSAs to section 53 of ICSO.</p> <p>Administration's remark that law enforcement officers who wilfully failed to comply with the requirements of the Commissioner under section 53(1)(a) of ICSO might be prosecuted for the common law offence of misconduct in public office.</p>	
015135 - 015411	Chairman Mr James TO Admin	<p>Discussion of Mr James TO's proposed CSAs to section 58 of ICSO (LC Paper No. CB(2)561/15-16(03)) and the Administration's response tabled at the meeting.</p> <p>Mr James TO's explanation of his proposed CSAs to section 58 of ICSO.</p> <p>Administration's remark that Mr James TO's proposed CSAs would create uncertainty in law.</p>	
015412 - 015523	Chairman Mr James TO	<p>Discussion of Mr James TO's second revised proposed CSAs to new section 65A and revised proposed CSAs to section 59 of ICSO (LC Paper Nos. CB(2)275/15-16(03) and CB(2)280/15-16(02)) and the Administration's response tabled at the meeting.</p>	
015524 - 015932	Chairman Mr James TO Admin	<p>Completion of scrutiny of the Bill.</p> <p>Proposed legislative timetable.</p>	