

**Interception of Communications and Surveillance (Amendment) Bill 2015
Debate and voting arrangements**

Main Object of the Bill : The former Commissioner on Interception of Communications and Surveillance has made a number of recommendations to enhance the effectiveness of the regulatory regime under the Interception of Communications and Surveillance Ordinance (Cap. 589) (“the Ordinance”), including the recommendation that the Commissioner on Interception of Communications and Surveillance (“the Commissioner”) be given express power to require public officers to provide to the Commissioner protected products, that is, interception products and surveillance products. The object of the Bill is to amend the Ordinance to implement the former Commissioner’s recommendations that have been endorsed by the incumbent Commissioner and agreed by the Administration.

First debate	: Clauses with no amendment	– Clauses 1 to 5, 7, 11, 14 and 15	
Voting	: To vote on the above clauses standing part of the Bill		
Second debate	: Clauses of the 1st group of amendments and the new clause proposed by Hon James TO	– Clauses 6, 8, 16 and 17 and new clause 8A	
Joint debate on the original clauses, the amendments thereto and the new clause.			
Debate theme : Specifying the provisions under which the relevant authorization is made			
Clauses 6, 8, 16 and 17, and new clause 8A			
<ul style="list-style-type: none"> – To amend clauses 6(2), 8(2), 16(10) and 17(5) to revise the references to “any provision of this Ordinance” in the proposed sections 24(3A), 27(3A)(b), 57(5A)(b) and 58(3A)(b) of the Ordinance (“the relevant proposed sections”) to “under those terms referred to in section 29(1) to (5), or under section 29(6) or (7) or section 30 of this Ordinance”. The relevant proposed sections provide that the new conditions specified by the panel judge (appointed under section 6(1) of the Ordinance) or the relevant authority may apply to any further authorization or requirement under the prescribed authorization or renewed prescribed authorization; and – to add new clause 8A to make a corresponding amendment to section 32 of the Ordinance, the contents of which are similar to the above amendments. 			
Mover	Voting	Remarks	Amendment(s)
Hon James TO	Mr TO’s 1st group of amendments	If Mr TO’s 1st group of amendments is passed , he may move his amendment on new clause 8A. If Mr TO’s 1st group of amendments is negatived , he will withdraw his amendment on new clause 8A.	LC Paper No. <u>CB(3) 487/15-16</u>
Hon James TO	<u>If Mr TO’s 1st group of amendments is passed, vote on the addition of new clause 8A</u>		LC Paper No. <u>CB(3) 487/15-16</u>

Third debate : Clauses of the 1st group of - Clauses 9, 10, 12 and 17 amendments proposed by the Secretary for Security (“S for S”)

Joint debate on the original clauses and the amendments thereto.

Debate theme : Amendments to the above clauses on various matters

Clause 9

– To amend the heading of the proposed section 38A of the Ordinance.

Clauses 10 and 12

– To amend sections 44(2)(a) and 48(1)(a) of the Ordinance to provide that the Commissioner must notify the date on which the unauthorized interception or covert surveillance began.

Clause 17

– To amend the heading of the proposed section 58 of the Ordinance.

Mover	Voting	Remarks	Amendment(s)
S for S	S for S’s 1st group of amendments	Irrespective of whether S for S’s 1st group of amendments is passed or not, S for S, Hon James TO and Hon WONG Yuk-man <u>may move</u> their remaining amendments.	LC Paper No. <u>CB(3) 439/15-16</u>

Fourth debate : Clause of the 2nd group of – Clause 13 amendments proposed by Hon James TO

Joint debate on the original clause and the amendments thereto.

Debate theme : Criminal penalty for failure to comply with the Commissioner’s requirements

Clause 13

– Section 53 of the Ordinance provides for further powers of the Commissioner for the purpose of performing his functions under the Ordinance. Clause 13 of the Bill amends section 53 to provide that the Commissioner may, for the purpose of performing his functions, require any public officer or any other person to provide any protected product to him. The amendments delete clause 13 and substitute a new clause 13, add a new subsection (3A) and amend section 53(5) of the Ordinance to achieve the following effect respectively:

- (a) any person would commit an offence and be liable to imprisonment for two years if he fails to comply with the requirement imposed by the Commissioner under section 53(1)(a) of the Ordinance (answering questions from and providing information for the Commissioner); and
- (b) the procedure to be adopted by the Commissioner under section 53(5) in performing his functions may include the making of written notes or summaries of protected products.

Mover	Voting	Remarks	Amendment(s)
Hon James TO	Mr TO's 2nd group of amendments	Irrespective of whether Mr TO's 2nd group of amendments is passed or not, Mr TO, Hon WONG Yuk-man and S for S <u>may move</u> their remaining amendments.	LC Paper No. <u>CB(3) 487/15-16</u>

Fifth debate : Clause with amendments - Clauses 16 proposed by Hon WONG Yuk-man

Joint debate on the original clause and the amendments thereto.

Debate theme : Clarifying the meanings of certain expressions

- To add subclauses (2A), (4A), (5A) and (6A) in order to replace “cause” (“安排”) with “order” (“下令”) in sections 57(1), 57(2)(a), 57(2)(b) and 57(3) of the Ordinance respectively.

Mover	Voting	Remarks	Amendment(s)
Hon WONG Yuk-man	Mr WONG 's amendments	Irrespective of whether Mr WONG's amendments are passed or not, S for S and Hon James TO <u>may move</u> their remaining amendments.	LC Paper No. <u>CB(3) 487/15-16</u>

Sixth debate : Clause of the 2nd group of amendments proposed by S for S and of the 3rd to 5th groups of amendments proposed by Hon James TO

Joint debate on the original clause and the amendments thereto.

Debate theme : Action needed to be taken in view of material inaccuracy in the information contained in the relevant application for prescribed authorization or material change in relevant circumstances

Clause 18 of the Bill adds a new section 58A to the Ordinance to require the officer concerned who is in charge of the interception or covert surveillance under a prescribed authorization to cause a report to be provided to the relevant authority after he becomes aware that there is a material inaccuracy in the information contained in the application for the issue of the prescribed authorization or there has been a material change in the relevant circumstances. Clause 18 also provides for the revocation of a prescribed authorization or a part thereof in this regard.

- **Hon James TO (3rd group of amendments) (his Version B)** : – To amend the heading of the proposed section 58A of the Ordinance in clause 18 by deleting “**Revocation of prescribed authorization in case of**” and substituting “**Report to relevant authority:**”.
 - to replace “becomes aware” in the proposed section 58A(1)(a) and (b) with “has reason to suspect”, and to replace “after becoming aware” in the proposed section 58A(2)(a) to (d) with “after having reason to suspect”; and
 - to amend the reference to “whether granted or imposed under its terms or any provision of this Ordinance” in the proposed section 58A(6)(b) to “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 section 30 of this Ordinance”.
- **Hon James TO (4th group of amendments) (his Version A)** : – Same as the 3rd group of amendments above but does not include the amendment to the proposed section 58A(6)(b).
- **S for S (2nd group of amendments)** : – To amend the heading of the proposed section 58A of the Ordinance in clause 18, with the content of the amendment to the heading being the same as that of the amendment in Mr TO’s 3rd group of amendments above.
- **Hon James TO (5th group of amendments) (his Version C)** : – To amend the proposed section 58A by adding subsection (5A) to provide that any information which has been obtained pursuant to the prescribed authorization or a part of the prescribed authorization and 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 revocation of the prescribed authorization or a part of the prescribed authorization concerned under section 58A(4).

Mover	Voting	Remarks	Amendment(s)
Hon James TO	Mr TO’s 3rd group of amendments.	<p>If his 3rd group of amendments is passed, Mr TO may not move his 4th group of amendments, and S for S may not move his 2nd group of amendments.</p> <p>If his 3rd group of amendments is negatived, Mr TO may move his 4th and 5th groups of amendments.</p>	LC Paper No. <u>CB(3) 487/15-16</u>
Hon James TO	<u>If Mr TO’s 3rd group of amendments is negatived</u> , vote on Mr TO’s 4th group of amendments.	<p>If Mr TO’s 4th group of amendments is passed, S for S may not move his 2nd group of amendments.</p> <p>If Mr TO’s 4th group of amendments is negatived, S for S may move his 2nd group of amendments and Mr TO may also move his 5th group of amendments.</p>	LC Paper No. <u>CB(3) 487/15-16</u>

S for S	<u>If Mr TO's 3rd and 4th groups of amendments are all negatived</u> , vote on S for S's 2nd group of amendments	Irrespective of whether S for S's 2nd group of amendments is passed or not, Mr TO <u>may move</u> his 5th group of amendments.	LC Paper No. <u>CB(3) 439/15-16</u>
Hon James TO	Mr TO's 5th group of amendments.		LC Paper No. <u>CB(3) 487/15-16</u>
Seventh debate : Clause of the 3rd group of amendments proposed by S for S and the 6th group of amendments proposed by Hon James TO			
Joint debate on the original clause and the amendments thereto.			
Debate theme : Requirement for retaining and destroying information collected under prescribed authorization			
Section 59(1)(c) of the Ordinance provides that a protected product is to be destroyed as soon as its retention is not necessary for the relevant purpose of the prescribed authorization. Clause 19 of the Bill seeks to amend section 59(1)(c) to provide for the destruction of protected products that have been provided to the Commissioner in compliance with a requirement under section 53(1)(a) of the Ordinance.			
<ul style="list-style-type: none"> ● Hon James TO (6th group of amendments) : – To seek to delete clause 19 and substitute a new clause 19 which incorporates the provisions of the original clause 19 and the Administration's proposed CSAs to this clause, and to add a new subsection (1C) to provide that any person who destroys the information before the Commissioner notifies the head of the department concerned 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 two years. ● S for S (3rd group of amendments) : – S for S's 3rd group of amendments are the same as Hon James TO's 6th group of amendments above, but do not include the new subsection 59(1C) as proposed by Mr TO. 			
Mover	Voting	Remarks	Amendment(s)
Hon James TO	Mr TO's 6th group of amendments	If Mr TO's 6th group of amendments is <u>passed</u> , S for S <u>may not move</u> his 3rd group of amendments. If Mr TO's 6th group of amendments is <u>negatived</u> , S for S <u>may move</u> his 3rd group of amendments.	LC Paper No. <u>CB(3) 487/15-16</u>
S for S	<u>If Mr TO's 6th group of amendments is negatived</u> , vote on S for S's 3rd group of amendments.		LC Paper No. <u>CB(3) 439/15-16</u>

**Eighth debate : Clause of the 7th, 8th and - Clause 20
9th groups of amendments
proposed by Hon James
TO**

Joint debate on the original clause and the amendments thereto.

Debate theme : Handling of protected products after revocation of prescribed authorization

Clause 20 of the Bill adds a new section 65A to the Ordinance requiring the head of the department concerned to make arrangements to ensure that the interception or covert surveillance concerned is discontinued as soon as reasonably practicable. Any protected product that is obtained after the prescribed authorization concerned is revoked and before the interception or covert surveillance concerned part is discontinued (hereafter referred to as “the time gap”) is to be regarded as having been obtained pursuant to a prescribed authorization.

- **Hon James TO (7th group of amendments)**
(his Version B: with penalty for criminal offence) : – To retain all the provisions of the proposed new section 65A in clause 20 and also:
 - (i) to require the department head concerned to ensure that the actual time of revocation of the prescribed authorization concerned and the actual time of discontinuance of the interception or covert surveillance concerned must be reported to the Commissioner;
 - (ii) add subsection (3) to the proposed section 65A to require an officer who has notice of the revocation not to use or gain access to any protected product (including its copy) obtained during the time gap; and
 - (iii) provide in the proposed section 65A(4) that any person who contravenes subsection (3) commits an offence and is liable to imprisonment for two years.
- **Hon James TO (8th group of amendments)**
(his Version A: without penalty for criminal offence) : – Same as the 7th group of amendments above, but does not include the proposed section 65A(4) on penalty for criminal offence.
- **Hon James TO (9th group of amendments)**
(his Version C) : – To amend the proposed section 65A, by adding subsection (3), to provide that any information which was obtained during the time gap and 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 discontinuance of the interception or covert surveillance concerned.

Mover	Voting	Remarks	Amendment(s)
Hon James TO	Mr TO's 7th group of amendments	If his 7th group of amendments is <u>passed</u> , Mr TO <u>may not move</u> his 8th group of amendments. If his 7th group of amendments is <u>negatived</u> , Mr TO <u>may move</u> his 8th group of amendments.	LC Paper No. <u>CB(3) 487/15-16</u>
Hon James TO	<u>If his 7th group of amendments is negatived</u> , vote on Mr TO's 8th group of amendments	Irrespective of whether his 7th or 8th groups of amendments are passed or not, Mr TO <u>may move</u> his 9th group of amendments. If his 7th group of amendments is <u>passed</u> , Mr TO will <u>revise</u> his 9th group of amendments to renumber the added section 65A(3) to section 65A(5). If his 8th group of amendments is <u>passed</u> , Mr TO will <u>revise</u> his 9th group of amendments to renumber the added section 65A(3) to section 65A(4).	LC Paper Nos. <u>CB(3) 487/15-16</u> and <u>CB(3) 652/15-16</u>
Hon James TO	Hon James TO's 9th group of amendments		LC Paper No. <u>CB(3) 487/15-16</u>

Secretary for Security's amendments

(Printed in LC Paper No. CB(3) 439/15-16 on 3 March 2016)

Hon James TO's amendments

(Printed in LC Paper No. CB(3) 487/15-16 on 22 March 2016)

Hon WONG Yuk-man's amendments

(Printed in LC Paper No. CB(3) 487/15-16 on 22 March 2016)

Hon James TO's revised amendments

(Printed in LC Paper No. CB(3) 652/15-16 on 31 May 2016)

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