

ORDER IN COUNCIL

XIII
1997

ratifying a Projet de Loi

ENTITLED

The Interception of Communications (Bailiwick of Guernsey) Law, 1997

(Registered on the Records of the Island of Guernsey
on the 17th June, 1997.)



1997

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 17th day of June, 1997 before de Vic Graham Carey, Esquire, Deputy Bailiff; present:—Stanley Walter John Jehan, John Edward Morris, Charles Anthony Spensley, John Richard Rowe Henry, David Charles Lowe, Esquires, Mrs. Eileen May Glass, Laurence Lenfestey Guille, Derek Martin Le Page, Stephen Edward Francis Le Poidevin and Alan Cecil Bisson, Esquires, Jurats.

The Deputy Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 20th day of May, 1997, approving and ratifying a *Projet de Loi* of the States of Guernsey entitled “The Interception of Communications (Bailiwick of Guernsey) Law, 1997”, THE COURT, after the reading of the said Order in Council and after having heard Her Majesty’s Comptroller thereon, ordered:—

1. That the said Order in Council be registered on the records of this Island; and
2. That an extract of this present Act, together with a copy of the said Order in Council, be sent by Her Majesty’s Greffier to the Clerk of the Court of Alderney and to the Seneschal of Sark for the registration on the records of those Islands respectively of which Order in Council the tenor followeth:—

At the Court at Buckingham Palace

The 20th day of May, 1997

PRESENT,

The Queen's Most Excellent Majesty in Council

WHEREAS, there was this day read at the Board a Report from the Right Honourable the Lords of the Committee of Council for the Affairs of Guernsey and Jersey dated the 14th day of April 1997 in the words following, viz.:—

“YOUR MAJESTY having been pleased, by Your General Order of Reference of the 22nd day of February 1952, to refer unto this Committee the humble Petition of the States of the Island of Guernsey, setting forth:—

“1. That, in pursuance of their Resolutions of the 29th day of July 1987 and the 27th day of March 1996, the States of Deliberation at a meeting held on the 27th day of June 1996 approved a Bill or “Projet de Loi” entitled “The Interception of Communications (Bailiwick of Guernsey) Law, 1997”, and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction thereto. 2. That the States of the Island of Alderney at a meeting held on the 4th day of September 1996 considered the said Bill or “Projet de Loi” when a Resolution was passed agreeing to the application of the same to Alderney. 3. That the Chief Pleas of the Island of Sark at a meeting held on the 22nd day of January 1997 considered the said Bill or “Projet de Loi” when a Resolution was passed agreeing to the application of the same to Sark. 4. That the said Bill or “Projet de Loi” is as set forth in the Schedule hereunto annexed. And most humbly praying that Your Majesty might be graciously pleased to grant Your Royal Sanction to the Bill or “Projet de Loi” of the States of Guernsey entitled “The Interception of Communications (Bailiwick of Guernsey) Law 1997”, and to order that the same shall have force of Law in the Bailiwick of Guernsey.”:

“THE LORDS OF THE COMMITTEE, in obedience to Your Majesty’s said Order of Reference, have taken the said Petition and the Projet de Loi into consideration and do this day agree humbly to report, as their opinion, to Your Majesty, that it may be advisable for Your Majesty to comply with the prayer of the said Petition and to approve of and ratify the said Projet de Loi.”

HER MAJESTY, having taken the said Report into consideration, is pleased, by and with the advice of Her Privy Council, to approve of and ratify the said Projet de Loi, and to order, and it is hereby ordered, that the same shall have the force of Law within the Bailiwick of Guernsey.

AND HER MAJESTY doth hereby further direct that this Order, and the said Projet de Loi (a copy whereof is hereunto annexed), be entered upon the Register of the Island of Guernsey and observed accordingly.

AND the Lieutenant Governor and Commander-in-Chief of the Island of Guernsey, the Bailiff and Jurats, and all other Her Majesty’s Officers for the time being in the said Island, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

N. H. Nicholls

The Interception of Communications
(Bailiwick of Guernsey) Law, 1997

THE STATES, in pursuance of their Resolutions of the 29th day of July, 1987^a and the 27th day of March, 1996^b, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

Prohibition on interception.

1. (1) A person who intentionally intercepts a communication in the course of its transmission by post or by means of a public telecommunication system is, subject to subsection (2), guilty of an offence and liable-

- (a) on summary conviction, to a fine not exceeding level 5 on the uniform scale;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years, a fine or both.

(2) A person is not guilty of an offence under this section if-

- (a) the communication is intercepted in obedience to a warrant issued by Her Majesty's Procureur under section 2;
- (b) that person has reasonable grounds for believing that the person to whom or by whom the communication is sent has consented to the interception;

^a Article II of Billet d'État No. XIV of 1987.

^b Article XI of Billet d'État No. IV of 1996.

- (c) the communication is intercepted for purposes connected with the provision of postal or public telecommunication services or with the enforcement of any enactment relating to the use of those services; or
- (d) the communication is being transmitted by wireless telegraphy and is intercepted, with the authority of the Secretary of State, for purposes connected with the issue of licences under the Wireless Telegraphy Act 1949^c or the prevention or detection of interference with wireless telegraphy.

Warrants for interception.

2. (1) Subject to the provisions of this section and of section 3, Her Majesty's Procurer may issue a warrant requiring the person to whom it is addressed to intercept, in the course of their transmission by post or by means of a public telecommunication system, the communications described in the warrant; and the warrant may also require that person to disclose the intercepted material to such persons and in such manner as are described in the warrant.

(2) Her Majesty's Procurer shall not issue a warrant unless he considers the warrant to be necessary-

- (a) in the interests of national security; or
- (b) for the purpose of preventing or detecting serious crime.

^c An Act of Parliament (1949 c. 54); the Act was extended to the Bailiwick of Guernsey by United Kingdom S. I. 1952/1900.

(3) The matters to be taken into account in considering whether a warrant is necessary as mentioned in subsection (2) shall include whether the information which it is considered necessary to acquire could reasonably be acquired by other means.

Scope of warrants.

3. The interception required by a warrant shall be the interception of -

- (a) communications sent to or from one or more addresses, specified in the warrant, likely to be used for the transmission of communications to or from-
 - (i) a person specified or described in the warrant; or
 - (ii) a set of premises so specified or described; and
- (b) such other communications (if any) as it is necessary to intercept in order to intercept communications falling within paragraph (a).

Issue and duration of warrants.

4. (1) A warrant shall not be issued except under the hand of Her Majesty's Procureur.

(2) A warrant shall, unless renewed under subsection (3), cease to have effect at the end of the relevant period.

(3) Her Majesty's Procureur may, before the end of the relevant period, renew a warrant if he considers that it continues to be necessary as mentioned in section 2(2).

(4) If, before the end of the relevant period, Her Majesty's Procureur considers that a warrant is no longer necessary as mentioned in section 2(2), he shall cancel it.

(5) A warrant shall not be renewed except by an instrument under the hand of Her Majesty's Procureur.

(6) In this section "**the relevant period**"-

(a) in relation to a warrant which has not been renewed, means the period of two months beginning with the day on which it was issued;

(b) in relation to a warrant which has been renewed, means-

(i) if the instrument by which it was renewed is endorsed with a statement that the renewal is considered necessary as mentioned in section 2(2)(a), the period of six months beginning with the day on which it was renewed;

(ii) if that instrument is not so endorsed, the period of one month beginning with that day.

Modification of warrants.

5. (1) Her Majesty's Procureur may modify a warrant by the insertion of an address which he considers likely to be used as mentioned in section 3(a).

(2) If Her Majesty's Procureur considers that an address specified in a warrant is no longer likely to be used as mentioned in section 3(a), he shall modify the warrant by the deletion of the address.

(3) A warrant shall not be modified except by an instrument under the hand of Her Majesty's Procureur.

Safeguards.

6. Where Her Majesty's Procureur issues a warrant he shall, unless such arrangements have already been made, make such arrangements as he considers necessary to secure-

- (a) that, in relation to any intercepted material -
 - (i) the extent to which the material is disclosed;
 - (ii) the number of persons to whom it is disclosed;
 - (iii) the extent to which it is copied; and
 - (iv) the number of copies made of it,

is limited to the minimum necessary as mentioned in section 2(2); and

- (b) that each copy made of any intercepted material is destroyed as soon as its retention is no longer necessary as mentioned in section 2(2).

The Tribunal.

7. (1) There is established a tribunal ("**the Tribunal**") in relation to which the Schedule to this Law applies.

(2) Any person who believes that communications sent to or by him have been intercepted in the course of their transmission by post or by means of a public telecommunication system may apply to the Tribunal for an investigation under this section.

(3) On such an application (other than one appearing to the Tribunal to be frivolous or vexatious), the Tribunal shall investigate-

- (a) whether there is or has been a relevant warrant; and
- (b) where there is or has been such a warrant, whether there has been any contravention of sections 2 to 5 in relation to it.

(4) If, on an investigation, the Tribunal concludes that there has been a contravention of sections 2 to 5 in relation to a relevant warrant, it shall-

- (a) give notice to the applicant stating its conclusion;
- (b) make a report of its findings to the Bailiff; and
- (c) if it thinks fit, make an order which may-

- (i) quash the relevant warrant;
- (ii) direct the destruction of copies of the intercepted material;
- (iii) direct the States to pay to the applicant such sum by way of compensation as may be specified.

(5) A notice given or report made under subsection (4)(a) or (b) shall state the effect of any order under subsection (4)(c) made in the case in question.

(6) If, on an investigation, the Tribunal comes to a conclusion other than that mentioned in subsection (4), it shall give notice to the applicant stating that there has been no contravention of sections 2 to 5 in relation to a relevant warrant.

(7) The decisions of the Tribunal (including decisions as to its jurisdiction) are not subject to appeal or liable to be questioned in any court.

(8) For the purposes of this section, a warrant is a relevant warrant in relation to an applicant if-

- (a) the applicant is specified or described in the warrant; or
- (b) an address used for the transmission of communications to or from a set of premises in the British Islands where the applicant resides or works is so specified.

The Commissioner.

8. (1) The Bailiff shall appoint a judge of the Court of Appeal to carry out the following functions -

- (a) to keep under review the carrying out by Her Majesty's Procureur of the functions conferred on him by sections 2 to 5 and the adequacy of any arrangements made for the purposes of section 6; and
- (b) to give to the Tribunal all such assistance as the Tribunal may require for the purpose of enabling it to carry out its functions under this Law.

(2) The person appointed under subsection (1) shall be known as the Commissioner.

(3) The Commissioner shall hold office in accordance with the terms of his appointment and there shall be paid to him, from monies provided by the States, such allowances as the States Advisory and Finance Committee may determine together with the travelling and other expenses incurred by him in connection with his functions under this section.

(4) Persons described in section 9(1)(a) shall disclose or give to the Commissioner any document or information required by him to enable him to carry out his functions under this section.

(5) The Tribunal shall send to the Commissioner a copy of every report made by it under section 7(4)(b).

(6) If at any time it appears to the Commissioner-

- (a) that there has been a contravention of sections 2 to 5 which has not been the subject of a report made by the Tribunal under section 7(4)(b); or
- (b) that any arrangements made for the purposes of section 6 have proved inadequate;

he shall make a report to the Bailiff in respect of the contravention or arrangements.

(7) As soon as practicable after the end of each calendar year, the Commissioner shall make a report (an "**annual report**") to the Bailiff in respect of the carrying out of his functions under this section.

(8) The Bailiff shall lay before the Royal Court, for registration and lodging at the Greffe, a copy of the annual report together with a statement as to whether any matter has been excluded therefrom in pursuance of subsection (9).

(9) If it appears to the Bailiff, after consultation with the Commissioner, that the publication of any matter in an annual report would be prejudicial to national security or to the prevention or detection of serious crime, the Bailiff may exclude that matter from the copy of the report laid before the Royal Court.

Exclusion of evidence.

9. (1) In any proceedings before a court or tribunal no evidence shall be adduced and no question in cross-examination shall be asked which (in either case) tends to suggest-

- (a) that an offence under section 1 has been or is to be committed by-

- (i) a person holding office in the Bailiwick of Guernsey under the Crown or a person employed by the States of Guernsey or Alderney;
 - (ii) the States Post Office or any person engaged in the business thereof; or
 - (iii) the States Telecommunications Board or any person engaged in the running of a public telecommunication system; or
- (b) that a warrant has been or is to be issued to any of those persons.

(2) Subsection (1) does not apply to proceedings for a relevant offence or proceedings before the Tribunal; and subsection (1)(a) does not apply where a person has been convicted of the offence under section 1.

(3) In this section "**relevant offence**" means-

- (a) an offence under section 1 of this Law, section 47 of the Post Office (Guernsey) Law, 1969^d or section 19, 20 or 21 of the Telecommunications (Guernsey) Law, 1972^e;
- (b) perjury committed in the course of proceedings for a relevant offence;

^d Ordres en Conseil Vol. XXII, p. 128.

- (c) attempting or conspiring to commit, or aiding, abetting, counselling or procuring the commission of, an offence falling within paragraph (a) or (b); and
- (d) contempt of court committed in the course of, or in relation to, proceedings for a relevant offence.

Interpretation.

10. (1) In this Law, unless the context otherwise requires-

"**address**" means any postal or telecommunication address;

"**Commissioner**" has the meaning given by section 8(2);

"**copy**", in relation to intercepted material, means-

- (i) any copy, extract or summary of the material;
- (ii) any record of the identities of the persons to or by whom the material was sent, whether or not in documentary form;

and cognate expressions shall be construed accordingly;

"**Her Majesty's Procureur**" includes Her Majesty's Comptroller;

^e Ordres en Conseil Vol. XXIII, p. 395.

"intercepted material", in relation to a warrant, means the communications intercepted in obedience to that warrant;

"judge of the Court of Appeal" means one of the ordinary judges of the Court of Appeal in the Bailiwick of Guernsey appointed under section 2(2) of the Court of Appeal (Guernsey) Law, 1961^f;

"person" includes any organisation and any association or combination of persons;

"public telecommunication service" means a telecommunication service provided by means of a public telecommunication system;

"public telecommunication system" means the telecommunication system operated by the States Telecommunications Board;

"telecommunication service" and **"telecommunication system"** have the same meanings as in the Telecommunications Act 1984^g;

"the Tribunal" means the tribunal established under section 7;

"warrant" means a warrant issued by Her Majesty's Procureur under section 2;

"wireless telegraphy" has the same meaning as in the Wireless Telegraphy Act 1949.

^f Ordres en Conseil Vol. XVIII, p. 315.

(2) Any reference in this Law to an enactment is a reference thereto as amended, extended, applied or re-enacted.

(3) For the purposes of this Law a communication which is in the course of its transmission otherwise than by means of a public telecommunication system shall be deemed to be in the course of its transmission by means of such a system if its mode of transmission identifies it as a communication which-

- (a) is to be or has been transmitted by means of such a system;
and
- (b) has been sent from, or is to be sent to, a country or territory outside the British Islands.

(4) For the purposes of this Law conduct which constitutes or, if it took place in the Bailiwick of Guernsey, would constitute an offence shall not be regarded as serious crime unless-

- (a) it involves the use of violence, results in substantial financial gain or is conduct by a large number of persons in pursuit of a common purpose; or
- (b) the offence is one for which a person who has attained the age of 21 years and who has no previous convictions could reasonably be expected to be sentenced to imprisonment for a term of three years or more.

^g An Act of Parliament (1984 c. 12).

(5) The Interpretation (Guernsey) Law, 1948^h applies to the interpretation of this Law throughout the Bailiwick.

Saving.

11. Nothing in this Law (except section 12) affects any power conferred on the States Post Office by or under any enactment to open, detain or delay any postal packet or to deliver any such packet to a person other than the person to whom it is addressed.

Amendments.

12. (1) In section 47 of the Post Office (Guernsey) Law, 1969 for "an express authority in writing of Her Majesty's Procureur" substitute "a warrant issued by Her Majesty's Procureur under section 2 of the Interception of Communications (Bailiwick of Guernsey) Law, 1997".

(2) In the Telecommunications (Guernsey) Law, 1972-

- (a) in section 20 the words "or intercepts" are repealed;
- (b) in section 21(1)(b) for "level 2"ⁱ substitute "level 3";
- (c) in section 21(2)(b) for "level 1" substitute "level 3";
- (d) in section 22-

^h Ordres en Conseil Vol. XIII, p. 355.

ⁱ The reference to level 2 was inserted by section 2(2) of the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989 (No. V).

- (i) the words "consisting in the improper divulgence of a message or communication" are repealed;
 - (ii) for "an express authority in writing of Her Majesty's Procureur" substitute "a warrant issued by Her Majesty's Procureur under section 2 of the Interception of Communications (Bailiwick of Guernsey) Law, 1997 or (where appropriate) that the disclosure, making known or divulgence was made for the prevention or detection of crime or for the purposes of criminal proceedings";
- (e) after section 22 insert-

"Metering information, etc.

22A.(1) An officer of the Board who, otherwise than in the course of his duty, intentionally discloses to any person information concerning the use made of a telegraphic line provided for another person is, subject to subsection (2), guilty of an offence and liable-

(a) on summary conviction, to a fine not exceeding level 5 on the uniform scale;

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, to a fine, or to both.

(2) Subsection (1) does not apply to a disclosure made -

(a) for the prevention or detection of crime or for the purposes of criminal proceedings;

(b) in the interests of national security or in pursuance of an order of a court.

(3) A certificate of one of Her Majesty's Principal Secretaries of State or of Her Majesty's Procureur that a disclosure was made in the interests of national security is conclusive evidence of the fact; and a document purporting to be such a certificate shall be received in evidence and deemed to be such a certificate unless the contrary is proved.";

(f) in section 26 the words "not exceeding level 2 on the uniform scale" are repealed.

Citation.

13. This Law may be cited as the Interception of Communications (Bailiwick of Guernsey) Law, 1997.

SCHEDULE
THE TRIBUNAL

Constitution of Tribunal

1. (1) The Tribunal shall consist of five members appointed by the Royal Court each of whom shall be an Advocate of the Royal Court of Guernsey or Jersey, a member of the Bar in England, Scotland or Northern Ireland, or a Solicitor of the Supreme Court of Judicature, in each case of not less than ten years standing.

(2) The members of the Tribunal shall, subject to the following provisions of this paragraph, hold office during good behaviour.

(3) A member of the Tribunal shall vacate office at the end of the period of five years beginning with the day of his appointment but shall be eligible for reappointment.

(4) A member of the Tribunal may be relieved of office by the Royal Court at his own request.

(5) A member of the Tribunal may be removed from office by the Royal Court.

President and Vice-President.

2. (1) The Royal Court may appoint as President or Vice-President of the Tribunal a person who is, or will be, a member of the Tribunal.

(2) If at any time the President of the Tribunal is temporarily unable to carry out the functions of the President under this Schedule, the Vice-President shall carry them out.

(3) A person shall cease to be President or Vice-President of the Tribunal if he ceases to be a member of the Tribunal.

Procedure of Tribunal.

3. The functions of the Tribunal in relation to an application made to it may be carried out by any two or more members of the Tribunal designated for the purpose by its President; and different members of the Tribunal may carry out functions in relation to different applications at the same time.

4. (1) Persons described in section 9(1)(a) shall disclose or give to the Tribunal any document or information required by it to enable it to carry out its functions under this Law.

(2) Subject to paragraph 7 of this Schedule, the Tribunal shall carry out its functions under this Law (except its functions in relation to reports under section 7(4)(b)) in such a way as to secure that no document or information disclosed or given to it is disclosed or given to any person (including an applicant to the Tribunal and a person described in section 9(1)(a)) without the consent of the person who disclosed or gave it to the Tribunal; and accordingly the Tribunal shall not, except in reports under section 7(4)(b), give reasons for any decision made by it.

(3) Subject to subparagraph (2) of this paragraph, the Tribunal may determine its own procedure.

Expenses.

5. There shall be paid to the members of the Tribunal, from monies provided by the States, such allowances as the States Advisory and Finance

Committee may determine together with the travelling and other expenses incurred by them in connection with their functions under this Law.

Officers.

6. The States Civil Service Board may, after consultation with the Tribunal, provide the Tribunal with such officers and services as the Board may consider necessary for the proper discharge of the Tribunal's functions.

7. The Tribunal may authorise any of its officers to obtain any document or information on the Tribunal's behalf.