

# ORDER IN COUNCIL

**XXIII**  
**2003**

ratifying a Projet de Loi

ENTITLED

## **The Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003**

(Registered on the Records of the Island of Guernsey  
on the 1st December, 2003.)



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2003

# ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

*The 1st day of December, 2003 before Geoffrey Robert Rowland, Esquire, Deputy Bailiff; present:— David Charles Lowe, Laurence Lenfestey Guille, Derek Martin Le Page, Stephen Edward Francis Le Poidevin, Alan Cecil Bisson, David Michael Jory, Keith Bichard, OBE, Esquires, The Reverend Peter Gerald Lane, Michael John Wilson, Michael John Tanguy, Esquires, and Susan Mowbray, Jurats.*

The Deputy Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 8th day of October, 2003, approving and ratifying a Projet de Loi of the States of Guernsey entitled “The Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003”, 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 registration on the records of those Islands respectively.

# At the Court at Buckingham Palace

The 8th day of October, 2003

PRESENT,

## The Queen's Most Excellent Majesty in Council

THE FOLLOWING, report from the Committee of Council for the Affairs of Jersey and Guernsey was today read at the Board:

“IN ACCORDANCE WITH YOUR MAJESTY’S General Order of Reference of the 22nd day of February 1952 the Committee have considered a petition of the States of Guernsey:”

“That, in pursuance of their Resolutions of the 1st of August, 2002, and the 1st August, 2003, the States of Deliberation at a meeting on the 1st August, 2003, approved a Projet de Loi entitled “The Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003” and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction to it. That the Projet de Loi is as set forth in the attached Schedule. The Petition most humbly prays that Your Majesty might be graciously pleased to sanction “The Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003” and to order that it shall have force of law in the Bailiwick of Guernsey.”

“THE COMMITTEE have considered the Projet de Loi and have agreed to report that it may be advisable for Your Majesty to approve and ratify it.”

HER MAJESTY, having taken the Report into consideration, was pleased, by and with the advice of Her Privy Council, to approve of and ratify the said Projet de Loi (a copy of which is annexed to this Order) and to order that it, together with this Order, shall have the force of law in the Bailiwick of Guernsey; and shall be entered on the Register of the Island of Guernsey and observed accordingly.

HER MAJESTY'S Officers in the Bailiwick of Guernsey, and all others whom it may concern, are therefore to take notice of Her Majesty's Order and to proceed accordingly.

*A. K. Galloway*

# PROJET DE LOI

ENTITLED

## **The Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003**

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4. Duty to make records concerning searches.
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*Additional powers of seizure*

18. Additional powers of seizure.

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# PROJET DE LOI

ENTITLED

## **The Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003**

**THE STATES**, in pursuance of their Resolutions of the 1<sup>st</sup> day of August, 2002, and the 1<sup>st</sup> day of August, 2003<sup>a</sup>, 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.

### **PART I**

#### **POWERS TO STOP AND SEARCH**

##### **Power of police officer to stop and search persons, vehicles, etc.**

1. (1) A police officer may exercise any power conferred by this section -

- (a) in any place to which at the time when he proposes to exercise the power the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission; or
- (b) in any other place to which people have ready access

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<sup>a</sup> Article VIII of Billet d'État No. XIX of 2002, and Article II of Billet d'État No. XIX of 2003.

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at the time when he proposes to exercise the power but which is not a dwelling.

(2) Subject to subsections (3) to (5) a police officer -

(a) may search any person or vehicle, or anything which is in or on a vehicle, for stolen or prohibited articles; and

(b) may detain a person or vehicle for the purpose of such a search.

(3) This section does not give a police officer power to search a person or vehicle or anything in or on a vehicle unless he has reasonable grounds for suspecting that he will find stolen or prohibited articles.

(4) If a person is in a garden or yard occupied with and used for the purposes of a dwelling or on other land so occupied and used, a police officer may not search him in the exercise of the power conferred by this section unless the police officer has reasonable grounds for believing -

(a) that he does not reside in the dwelling; and

(b) that he is not in the place in question with the express or implied permission of a person who resides in the dwelling.

(5) If a vehicle is in a garden or yard occupied with and used for the purposes of a dwelling or on other land so occupied and used, a police officer may not search the vehicle or anything in or on it in the exercise of the power

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conferred by this section unless he has reasonable grounds for believing -

- (a) that the person in charge of the vehicle does not reside in the dwelling; and
- (b) that the vehicle is not in the place in question with the express or implied permission of a person who resides in the dwelling.

(6) If in the course of such a search a police officer discovers an article which he has reasonable grounds for suspecting to be a stolen or prohibited article he may seize it.

(7) An article is prohibited for the purposes of this Part of this Law if it is -

- (a) an offensive weapon; or
- (b) an article -
  - (i) made or adapted for use in the course of or in connection with an offence to which this subparagraph applies; or
  - (ii) intended by the person having it with him for such use by him or by some other person.

(8) The offences to which subsection (7)(b)(i) applies are -

- (a) burglary;

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- (b) theft;
- (c) offences under section 12 of the Theft (Bailiwick of Guernsey) Law, 1983<sup>b</sup> (taking motor vehicle or other conveyance without authority); and
- (d) offences under section 15 of that Law (obtaining property by deception);
- (e) offences under section 1 of the Criminal Damage (Bailiwick of Guernsey) Law, 1983 (destroying or damaging property)<sup>c</sup>.

**Provisions relating to search under section 1 and other powers**

2. (1) A police officer who detains a person or vehicle in the exercise of the power conferred by section 1 or of any other power to search a person without first arresting him or to search a vehicle without making an arrest, need not conduct a search if it appears to him subsequently that no search is required, or that a search is impracticable.

(2) If a police officer contemplates a search, other than a search of an unattended vehicle, in the exercise of the power conferred by section 1 or of any other power to search a person without first arresting him or to search a vehicle without making an arrest, he shall, subject to subsection (4), take reasonable steps before he commences the search to bring to the attention of the appropriate person -

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<sup>b</sup> Ordres en Conseil, Vol. XXVIII, p5.

<sup>c</sup> Ordres en Conseil, Vol. XXVIII, p203.

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- (a) if the police officer is not in uniform, documentary evidence that he is a police officer; and
- (b) whether he is in uniform or not, the matters specified in subsection (3);

and he shall not commence the search until he has done so.

(3) The matters referred to in subsection (2)(b) are -

- (a) the police officer's name and the name of the police station to which he is attached;
- (b) the object of the proposed search;
- (c) the police officer's grounds for proposing to make it; and
- (d) the effect of section 4(7) or (8) as may be appropriate.

(4) A police officer need not bring the effect of section 4(7) or (8) to the attention of the appropriate person if it appears to the police officer that it will not be practicable to make the record in section 4(1).

(5) On completing a search of an unattended vehicle or anything in or on such a vehicle in the exercise of any such power as is mentioned in subsection (2) a police officer shall leave a notice -

- (a) stating that he has searched it;

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- (b) giving the name of the police station to which he is attached;
- (c) stating that an application for compensation for any damage caused by the search may be made to that police station; and
- (d) stating the effect of section 4(8).

(6) The police officer shall leave the notice inside the vehicle unless it is not reasonably practicable to do so without damaging the vehicle.

(7) A person or vehicle may be detained for the purposes of such a search for such time as is reasonably required to permit a search to be carried out either at the place where the person or vehicle was first detained or nearby.

(8) Neither the power conferred by section 1 nor any other power to detain and search a person without first arresting him or to detain and search a vehicle without making an arrest is to be construed -

- (a) as authorising a police officer to require a person to remove any of his clothing in public other than an outer coat, jacket, headgear or gloves; or
- (b) as authorising a police officer not in uniform to stop a vehicle.

(9) In this section “**the appropriate person**” means -

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- (a) if the police officer proposes to search a person, that person; and
- (b) if he proposes to search a vehicle, or anything in or on a vehicle, the person in charge of the vehicle.

**Powers to stop and search in anticipation of violence**

3. (1) Subject to subsection (11), where a police officer of or above the rank of inspector reasonably believes that -

- (a) incidents involving serious violence may take place in any part of the Bailiwick, and
- (b) it is expedient to do so to prevent their occurrence,

he may give an authorisation that the powers to stop and search persons and vehicles conferred by this section shall be exercisable at any place within that locality for a period not exceeding twenty-four hours.

(2) If it appears to an officer of or above the rank of chief inspector that it is expedient to do so, having regard to offences which have been, or are reasonably suspected to have been, committed in connection with any activity falling within the authorisation, he may direct that the authorisation shall continue in being for a further six hours.

(3) If an inspector gives an authorisation under subsection (1) he must cause an officer of or above the rank of chief inspector to be informed as soon as practicable.

(4) This section confers on any police officer in uniform power -

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- (a) to stop any pedestrian and search him or anything carried by him for offensive weapons or dangerous instruments;
- (b) to stop any vehicle and search the vehicle, its driver and any passenger for offensive weapons or dangerous instruments;
- (c) to require any person to remove any item which the police officer reasonably believes that person is wearing wholly or mainly for the purpose of concealing his identity;
- (d) to seize any item which the police officer reasonably believes any person intends to wear wholly or mainly for the purpose set out in paragraph (c).

(5) A police officer may, in the exercise of the powers conferred by subsection (4), stop any person or vehicle and make any search he thinks fit whether or not he has any grounds for suspecting that the person or vehicle is carrying weapons or articles of that kind.

(6) If in the course of a search under this section a police officer discovers a dangerous instrument or an article which he has reasonable grounds for suspecting to be an offensive weapon, he may seize it.

(7) Any things seized by a police officer under this section may be retained in accordance with regulations made by the Committee.

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(8) The Committee may make regulations concerning the retention and safe-keeping, and the disposal and destruction in prescribed circumstances, of things seized under this section.

(9) A person who fails-

(a) to stop, or to stop a vehicle; or

(b) to remove an item worn by him,

when required to do so by a police officer in the exercise of his powers under this section shall be liable on summary conviction to imprisonment for a term not exceeding one month or to a fine not exceeding level 3 on the uniform scale or both.

(10) Any authorisation under this section shall be in writing signed by the person giving it and shall specify the grounds on which it is given, the locality in which and the period during which the powers conferred by this section are exercisable, and a direction under subsection (2) shall also be given in writing or, where that is not practicable, recorded in writing as soon as it is practicable to do so.

(11) In the Island of Sark an authorisation under subsection (1) may also be given by either the Constable or the Vingtenier, in which case subsections (2) and (3) shall not apply.

(12) In this section “**vehicle**” includes a caravan.

(13) The powers conferred by this section are in addition to and not in derogation of any power otherwise conferred.

**Duty to make records concerning searches**

4. (1) Where a police officer has carried out a search in the exercise of any such power as is mentioned in sections 2(1) and 3(4) and (5) he shall make a record of it in writing unless it is not practicable to do so.

(2) If a police officer is required by subsection (1) to make a record of a search but it is not practicable to make the record immediately, he shall make it as soon as practicable after the completion of the search.

(3) The record of a search of a person shall include a note of his name, if the police officer knows it, but a police officer may not detain a person to find out his name.

(4) If a police officer does not know the name of the person whom he has searched, the record of the search shall include a note otherwise describing that person.

(5) The record of a search of a vehicle shall include a note describing the vehicle.

(6) The record of a search of a person or a vehicle shall identify the police officer making it and shall state -

- (a) the object of the search;
- (b) the grounds for making it;
- (c) the date and time when it was made;

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- (d) the place where it was made;
- (e) whether anything, and if so what, was found; and
- (f) whether any, and if so what, injury to a person or damage to property appears to the police officer to have resulted from the search.

(7) If a police officer who conducted a search of a person made a record of it, the person who was searched shall be entitled to a copy of the record if he asks for one before the end of the period specified in subsection (9).

(8) If the police officer who conducted a search of a vehicle made a record of the search, and the owner of the vehicle or the person who was in charge of the vehicle at the time when it was searched asks for a copy of the record of the search before the end of the period specified in subsection (9), the person who made the request shall be entitled to a copy.

(9) The period mentioned in subsections (7) and (8) is the period of 6 months beginning with the date on which the search was made.

(10) The requirements imposed by this section with regard to records of searches of vehicles shall apply also to records of searches of vessels and aircraft.

**Road checks**

5. (1) This section shall have effect in relation to the conduct of road checks by police officers for the purpose of ascertaining whether a vehicle is carrying -

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- (a) a person who has committed an offence other than a road traffic offence or a motor tax offence;
- (b) a person who is a witness to such an offence;
- (c) a person intending to commit such an offence; or
- (d) a person who is unlawfully at large.

(2) For the purposes of this section a road check consists of the exercise -

- (a) in any locality in Guernsey, of the power conferred by the Vehicular Traffic Ordinance, 1929<sup>d</sup>;
- (b) in any locality in Alderney, of the power conferred by the Alderney Road Traffic and Public Highways Ordinance, 1966;

in such a way as to stop all vehicles or vehicles selected by any criterion during the period for which its exercise in that way in that locality continues.

(3) Subject to subsection (5), there may only be such a road check if a police officer of the rank of chief inspector or above authorises it in writing.

(4) An officer may only authorise a road check under this section-

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<sup>d</sup> Recueil d'Ordonnances, Tome VIII p184; p196.

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- (a) for the purpose specified in subsection (1)(a), if he has reasonable grounds -
  - (i) for believing that the offence is a serious arrestable offence; and
  - (ii) for suspecting that the person is, or is about to be, in the locality in which vehicles would be stopped if the road check were authorised;
- (b) for the purpose specified in subsection (1)(b), if he has reasonable grounds for believing that the offence is a serious arrestable offence;
- (c) for the purpose specified in subsection (1)(c), if he has reasonable grounds -
  - (i) for believing that the offence would be a serious arrestable offence; and
  - (ii) for suspecting that the person is, or is about to be, in the locality in which vehicles would be stopped if the road check were authorised;
- (d) for the purpose specified in subsection (1)(d), if he has reasonable grounds for suspecting that the person is, or is about to be, in that locality.

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(5) An officer below the rank of chief inspector may authorise such a road check if it appears to him that it is required as a matter of urgency for one of the purposes specified in subsection (1).

(6) If an authorisation is given under subsection (5), the officer who gives it shall, as soon as practicable -

(a) make a written record of the time at which he gives it;  
and

(b) cause an officer of the rank of chief inspector or above to be informed that it has been given.

(7) An officer to whom a report is made under subsection (6) may, in writing, authorise the road check to continue.

(8) If an officer to whom a report is made under subsection (6) considers that the road check should not continue, he shall record in writing the fact that it took place and the purpose for which it took place.

(9) An officer giving an authorisation under this section shall specify the locality in which vehicles are to be stopped.

(10) An officer giving an authorisation under this section, other than an authorisation under subsection (5) -

(a) shall specify a period, not exceeding seven days, during which the road check may continue; and

(b) may direct that the road check shall be continuous or

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shall be conducted at specified times during that period.

(11) If it appears to an officer of the rank of chief inspector or above that a road check ought to continue beyond the period for which it has been authorised he may from time to time in writing specify a further period, not exceeding seven days, during which it may continue.

(12) Every written authorisation shall specify -

- (a) the name of the officer giving it;
- (b) the purpose of the road check; and
- (c) the locality in which vehicles are to be stopped.

(13) The duties to specify the purposes of a road check imposed by subsections (8) and (12) include duties to specify any relevant serious arrestable offence.

(14) Where a vehicle is stopped in a road check, the person in charge of the vehicle at the time when it is stopped shall be entitled to obtain a written statement of the purpose of the road check if he applies for such a statement not later than the end of the period of 6 months beginning on the day on which the vehicle was stopped.

(15) Nothing in this section affects the exercise by police officers of any power to stop vehicles for purposes other than those specified in subsection (1).

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(16) This section shall not apply to the Island of Sark.

**Reports of recorded searches and of road checks**

6. (1) Every annual report by the Chief Officers shall contain information -

- (a) about searches recorded under section 4 which have been carried out during the period to which the report relates; and
- (b) about road checks authorised during that period under section 5.

(2) At the Michaelmas Meeting of the Chief Pleas of Sark the Constable shall report in writing giving information about searches in Sark recorded under section 4 which have been carried out during the 12 months preceding the date of the report.

(3) The information about searches shall not include information about specific searches but shall include, for each month during the period to which the report relates -

- (a) the total numbers of searches for stolen articles, for offensive weapons and for other prohibited articles; and
- (b) the total number of persons arrested in consequence of searches of each of the descriptions specified in paragraph (a).

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(4) The information about road checks shall include information about the reason for authorising each road check and about the result of each of them.

**Part I: Supplementary**

7. (1) Sections 1, 2 and 3 apply, with any necessary modifications, to vessels and aircraft as they apply to vehicles.

(2) In this Part, the “Committee” means -

- (a) in relation to things seized by police officers, the Committee for Home Affairs;
- (b) in relation to things seized by customs officers, the Board of Administration.

**PART II**

**POWERS OF ENTRY, SEARCH AND SEIZURE**

*Search warrants*

**Powers of Bailiff to authorise entry and search of premises**

8. (1) If on an application made by a police officer the Bailiff or the appropriate judicial officer is satisfied that there are reasonable grounds for believing -

- (a) that a serious arrestable offence has been committed;

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and

- (b) that there is material on premises specified in the application which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence; and
- (c) that the material is likely to be relevant evidence; and
- (d) that it does not consist of or include items subject to legal professional privilege, or special material; and
- (e) that any of the conditions specified in subsection (3) applies,

he may issue a warrant authorising a police officer to enter and search the premises.

(2) A police officer may seize and retain anything for which a search has been authorised under subsection (1).

(3) The conditions mentioned in subsection (1)(e) are -

- (a) that it is not practicable to communicate with any person entitled to grant entry to the premises;
- (b) that it is practicable to communicate with a person entitled to grant entry to the premises but it is not practicable to communicate with any person entitled to grant access to the evidence;

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- (c) that entry to the premises will not be granted unless a warrant is produced;
- (d) that the purpose of a search may be frustrated or seriously prejudiced unless a police officer arriving at the premises can secure immediate entry to them.

(4) In this Law “**relevant evidence**”, in relation to an offence, means anything that would be admissible in evidence at a trial for the offence.

(5) The power to issue a warrant conferred by this section is in addition to any such power otherwise conferred.

**Special provisions as to access**

9. (1) A police officer may obtain access to special material for the purposes of a criminal investigation by making an application under Schedule 1 and in accordance with that Schedule.

(2) Subject to subsection (3), any enactment in force prior to the date of commencement of this Law under which a search of premises for the purposes of a criminal investigation could be authorised by the issue of a warrant to a police officer shall cease to have effect so far as it relates to the authorisation of searches -

- (a) for items subject to legal professional privilege; or
- (b) for special material consisting of documents or records other than documents.

(3) Subsection (2) shall not apply to -

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- (a) any of the enactments specified in Schedule 2; or
- (b) any other enactment specified for the purposes of this subsection by Ordinance of the States.

**Search warrants - safeguards**

**10.** (1) This section and section 11 have effect in relation to the issue to police officers under any enactment, including an enactment passed after this Law, of warrants to enter and search premises; and an entry on or search of premises under a warrant is unlawful unless the application for and the issue of the warrant complies with this section, and the execution of the warrant complies with section 11.

- (2) Where a police officer applies for any such warrant, he shall -
  - (a) state the ground on which he makes the application; and
  - (b) state the enactment under which the warrant would be issued; and
  - (c) specify the premises which it is desired to enter and search; and
  - (d) identify, so far as is practicable, the articles or persons to be sought.

(3) An application for such a warrant shall be made ex parte and supported by information in writing, and the hearing of the application shall be in

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private.

(4) The police officer shall answer on oath any question that he is asked by the person hearing the application.

(5) A warrant shall authorise an entry on one occasion only.

(6) A warrant shall –

(a) identify the person who applies for it, the date on which it is issued, the enactment under which it is issued, and the premises to be searched; and

(b) identify so far as is practicable, the articles or persons to be sought.

(7) Two copies shall be made of a warrant, and the copies shall be clearly certified as copies.

**Execution of warrants**

11. (1) A warrant issued under section 8 or 9 to enter and search premises may be executed by any police officer.

(2) Such a warrant may authorise persons to accompany any police officer who is executing it.

(3) Entry and search under a warrant must be within one month from the date of its issue.

(4) Entry and search under a warrant must be at a reasonable

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hour unless it appears to the police officer executing it that the purpose of a search may be frustrated on an entry at a reasonable hour.

(5) Where the occupier of premises which are to be entered and searched is present at the time when a police officer seeks to execute a warrant to enter and search them, the police officer -

- (a) shall identify himself to the occupier and, if not in uniform, shall produce to him documentary evidence that he is a police officer;
- (b) shall produce the warrant to him; and
- (c) shall supply him with a copy of it.

(6) Where the occupier of such premises is not present at the time when a police officer seeks to execute such a warrant, but some other person who appears to the police officer to be in charge of the premises is present, subsection (5) above shall have effect as if any reference to the occupier were a reference to that other person.

(7) If there is no person present who appears to the police officer to be in charge of the premises, he shall leave a copy of the warrant in a prominent place on the premises.

(8) A search under a warrant may only be a search to the extent required for the purpose for which the warrant was issued.

(9) A police officer executing a warrant shall make an endorsement on it stating whether the articles or persons sought were found, and

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whether any articles, other than articles which were sought, were seized.

(10) A warrant which has been executed, or which has not been executed within the time authorised for its execution, shall be returned –

- (a) where the warrant was issued in Guernsey, to Her Majesty's Greffier;
- (b) where the warrant was issued in Alderney, to the Clerk of the Court of Alderney;
- (c) where the warrant was issued in Sark, to the Greffier of Sark.

(11) A warrant which is returned under subsection (10) shall be retained for 12 months beginning on the date of its return by the person named in paragraphs (a) to (c).

(12) If during the period for which a warrant is to be retained under subsection (11) the occupier of the premises to which it relates asks to inspect it, he shall be allowed to do so.

**Entry for purpose of arrest etc.**

12. (1) Subject to the following provisions of this section, and without prejudice to any other enactment, a police officer may enter and search any premises for the purpose –

- (a) of executing a warrant of arrest issued in connection with or arising out of criminal proceedings;

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- (b) of arresting a person for an arrestable offence;
- (c) of recapturing any person whomsoever who is unlawfully at large and whom he is pursuing; or
- (d) of saving life or limb or preventing serious damage to property.

(2) Except for the purpose specified in paragraph (d) of subsection (1) above, the powers of entry and search conferred by this section -

- (a) are only exercisable if the police officer has reasonable grounds for believing that the person whom he is seeking is on the premises; and
- (b) are limited, in relation to premises consisting of two or more separate dwellings, to powers to enter and search -
  - (i) any parts of the premises which the occupiers of any dwelling comprised in the premises use in common with the occupiers of any other such dwelling; and
  - (ii) any such dwelling in which the police officer has reasonable grounds for believing that the person whom he is seeking may be.

(3) The power of search conferred by this section is only a power to search to the extent that is reasonably required for the purpose for which the

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power of entry is exercised.

(4) Subject to subsection (5) all the rules of customary and common law under which a police officer has power to enter premises without a warrant are hereby abolished.

(5) Nothing in subsection (4) affects any power of entry to deal with or prevent a breach of the peace.

**Entry and search after arrest**

13. (1) Subject to the following provisions of this section a police officer may enter and search any premises occupied or controlled by a person who is under arrest for an arrestable offence if he has reasonable grounds for suspecting that there is on the premises evidence, other than items subject to legal professional privilege, that relates -

(a) to that offence; or

(b) to some other arrestable offence which is connected with or similar to that offence.

(2) A police officer may seize and retain anything for which he may search under subsection (1).

(3) The power to search conferred by subsection (1) is only a power to search to the extent that is reasonably required for the purpose of discovering such evidence.

(4) Subject to subsections (5) and (9) the powers conferred by this section may not be exercised unless an officer of the rank of inspector or above has

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authorised them in writing.

(5) A police officer may conduct a search under subsection (1) before the person is taken to a designated place of detention and without obtaining an authorisation under subsection (4) if the presence of that person at a place other than a designated place of detention is necessary for the effective investigation of the offence.

(6) If a police officer conducts a search by virtue of subsection (5), he shall inform an officer of the rank of inspector or above that he has made the search as soon as practicable after he has made it.

(7) An officer who authorises a search, or who is informed of a search under subsection (6), shall make a record in writing -

(a) of the grounds for the search; and

(b) of the nature of the evidence that was sought.

(8) If the person who was in occupation or control of the premises at the time of the search is in police detention at the time the record is to be made, the officer shall make the record as part of his custody record.

(9) In the Island of Sark, an authorisation under subsection (4) may also be given by the Constable or the Vingtenier, in which case subsections (5) and (6) do not apply.

(10) For the purposes of this section references to an arrestable offence includes any conduct which is an offence under the law of a country or territory outside the Bailiwick and which would constitute an arrestable offence if it

had occurred in any part of the Bailiwick.

**General power of seizure etc.**

14. (1) The powers conferred by subsections (2), (3) and (4) are exercisable by a police officer who is lawfully on any premises.

(2) The police officer may seize anything which is on the premises if he has reasonable grounds for believing -

- (a) that it has been obtained in consequence of the commission of an offence; and
- (b) that it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed.

(3) The police officer may seize anything which is on the premises if he has reasonable grounds for believing -

- (a) that it is evidence in relation to an offence which he is investigating or any other offence; and
- (b) that it is necessary to seize it in order to prevent the evidence being concealed, lost, damaged, altered or destroyed.

(4) The police officer may require any information which is stored in any electronic form and is accessible from the premises to be produced in a form in which it can be taken away and in which it is visible and legible, or from which it can readily be produced in a visible and legible form, if he has reasonable grounds for believing -

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- (a) that it is evidence in relation to an offence which he is investigating or any other offence, or that it has been obtained in consequence of the commission of an offence; and
- (b) that it is necessary to do so in order to prevent it being concealed, lost, damaged, tampered with or destroyed.

(5) The powers conferred by this section are in addition to any power otherwise conferred.

(6) No power of seizure conferred on a police officer under any enactment (including an enactment coming into force after the date of commencement of this Law) is to be taken to authorise the seizure of an item which the police officer exercising the power has reasonable grounds for believing to be subject to legal professional privilege.

**Extension of powers of seizure to computerised information**

**15.** (1) Every power of seizure which is conferred by an enactment to which this section applies on a police officer who has entered premises in the exercise of a power conferred by an enactment shall be construed as including a power to require any information stored in any electronic form and accessible from the premises to be produced in a form in which it can be taken away and in which it is visible and legible or from which it can readily be produced in a visible and legible form.

(2) This section applies -

- (a) to any enactment coming into force before the

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commencement of this Law;

- (b) to sections 8 and 13;
- (c) to paragraph 13 of Schedule 1; and
- (d) to any enactment coming into force on or after the commencement of this Law.

**Access and copying**

**16.** (1) A police officer who seizes anything in the exercise of a power conferred by any enactment, including an enactment coming into force after the date of commencement of this Law, shall, if so requested by a person showing himself -

- (a) to be the occupier of premises on which it was seized;  
or
- (b) to have had custody or control of it immediately before the seizure,

provide that person with a record of what he seized.

(2) The officer shall provide the record within a reasonable time from the making of the request for it.

(3) Subject to subsection (8) if a request for permission to be granted access to anything which -

- (a) has been seized by a police officer; and

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- (b) is retained by the police for the purpose of investigating an offence,

is made to the officer in charge of the investigation by a person who had custody or control of the thing immediately before it was so seized or by someone acting on behalf of such a person, the officer shall allow the person who made the request access to it under the supervision of a police officer.

(4) Subject to subsection (8) if a request for a photograph or copy of any such thing is made to the officer in charge of the investigation by a person who had custody or control of the thing immediately before it was so seized, or by someone acting on behalf of such a person, the officer shall -

- (a) allow the person who made the request access to it under the supervision of a police officer for the purpose of photographing or copying it; or
- (b) photograph or copy it, or cause it to be photographed or copied.

(5) A police officer may also photograph or copy, or have photographed or copied, anything which he has power to seize, without a request being made under subsection (4).

(6) Where anything is photographed or copied under subsection (4)(b), the photograph or copy shall be supplied to the person who made the request.

(7) The photograph or copy shall be so supplied within a

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reasonable time from the making of the request.

(8) There is no duty under this section to grant access to, or to supply a photograph or copy of, anything if the officer in charge of the investigation for the purposes of which it was seized has reasonable grounds for believing that to do so would prejudice -

- (a) that investigation;
- (b) the investigation of an offence other than the offence for the purposes of investigating which the thing was seized; or
- (c) any criminal proceedings which may be brought as a result of the investigation of which he is in charge or any such investigation as is mentioned in paragraph (b).

**Retention**

17. (1) Subject to subsection (4) anything which has been seized by a police officer or taken away by a police officer following a requirement made by virtue of section 14 or 15 may be retained so long as is necessary in all the circumstances.

(2) Without prejudice to the generality of subsection (1) -

- (a) anything seized for the purposes of a criminal investigation may be retained, except as provided by subsection (4) -

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- (i) for use as evidence at a trial for an offence; or
  - (ii) for forensic examination or for investigation in connection with an offence; and
- (b) anything may be retained in order to establish its lawful owner, where there are reasonable grounds for believing that it has been obtained in consequence of the commission of an offence.

(3) Nothing seized on the ground that it may be used to cause physical injury to any person, to damage property, to interfere with evidence or to assist in escape from police detention or lawful custody may be retained when the person from whom it was seized is no longer in police detention or the custody of a court or is in the custody of a court but has been released on bail.

(4) Nothing may be retained for either of the purposes mentioned in subsection (2)(a) if a photograph or copy would be sufficient for that purpose.

*Additional powers of seizure*

**Additional powers of seizure**

**18.** (1) Where a police officer who is –

- (a) lawfully on any premises; or
- (b) carrying out a lawful search of any person,

finds anything to which the conditions in subsections (2) or (3) apply, that thing may be seized and removed elsewhere.

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(2) A police officer may seize and remove anything under this section if –

- (a) he is acting under a power to seize property conferred by any enactment;
- (b) he has reasonable grounds for believing that what he has found may be or may contain something which he is entitled to seize; and
- (c) in all the circumstances it is not reasonably practicable to determine at the time and place of the seizure whether what he has found is something that he is entitled to seize or the extent to which what he has found contains something that he is entitled to seize.

(3) A police officer may seize and remove anything under this section if –

- (a) he is acting under a power to seize property under any power conferred by any enactment;
- (b) he has reasonable grounds for believing that what he has found consists of material which he is entitled to seize but which is contained in something else that he has (apart from this section) no power to seize; and
- (c) in all the circumstances it is not reasonably practicable for the property to be separated at the time and place

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of the seizure.

(4) For the purposes of this section, the factors to be taken into account in considering whether or not it is reasonably practicable at the time of the seizure for a proper determination to be made, or for something to be separated from something else, shall be confined to the following -

- (a) how long it would take to carry out the determination or separation at that time and place;
- (b) the number of persons that would be required to carry out that determination or separation on those premises or at the point of seizure within a reasonable period;
- (c) whether the determination or separation at that time and place would be likely to involve damage to property;
- (d) the apparatus or equipment that it would be necessary or appropriate to use for the carrying out of the determination or separation; and
- (e) in the case of separation, whether separation at the time of seizure would be likely to prejudice the use of some or all of the separated seizable property for any lawful purpose.

(5) Section 14(6) shall not apply to the power of seizure conferred by subsection (3).

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(6) The power of seizure conferred by this section is a power to seize property only to the extent that it is necessary and reasonable to do so for the purpose for which the power to seize property is exercised, and only to the extent that it is necessary to remove the property to perform a proper determination or separation.

**Notice of exercise of power under section 18**

**19.** (1) Where a police officer exercises a power of seizure conferred by section 18, on doing so he shall provide a written notice to –

- (a) where the power arises pursuant to section 18 (1)(b), the person from whom the seizure is made;
- (b) where the power arises pursuant to section 18 (1)(a) and subject to subsection (2), the occupier of the premises; or
- (c) where the occupier of the premises is not present at the time of the exercise of the power, a person who appears to the officer to be in charge of the premises.

(2) Where it appears to the police officer exercising a power of seizure pursuant to section 18 (1) (a) that there is no one present on the premises to whom he may give a notice for the purposes of complying with subsection (1), he shall before leaving the premises, instead of complying with subsection (1) (b), attach the notice in a prominent place on the premises.

(3) The written notice shall specify what has been seized in reliance on the powers conferred by section 18 and the grounds on which those powers have been exercised.

**Examination and return of property seized under section 18 - safeguards**

**20.** (1) This section applies where anything has been seized under a power conferred by section 18.

(2) It shall be the duty of the police officer for the time being in possession of the seized property in consequence of the exercise of that power to secure that there are arrangements in force which ensure -

- (a) that an initial examination of the property is carried out as soon as reasonably practicable after the seizure;
- (b) that such examination is confined to whatever is necessary for determining how much of the property falls within subsection (3); and
- (c) that anything which is found on that examination not to fall within subsection (3) is separated from the rest of the seized property and is returned as soon as reasonably practicable after the examination of all the seized property has been completed.

(3) The seized property falls within this subsection to the extent only -

- (a) that it is property for which the police officer seizing it had power to search when he made the seizure but is not property the return of which is required by section 21;

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- (b) that it is property the retention of which is authorised by section 22, or
- (c) that it is something which, in all the circumstances, it will not be reasonably practicable, following the examination, to separate from property falling within paragraph (a) or (b).

(4) The police officer for the time being having possession of the seized property in consequence of the seizure shall secure that arrangements are in place to ensure that the seized property is not examined, copied or put to any use beyond that which is permitted by this section, except with the permission of the Bailiff or the appropriate judicial officer.

(5) The police officer for the time being having possession of any seized property which is inextricably linked shall secure that arrangements are in place to ensure that the property is not examined, copied, or put to any use other than that which is necessary for facilitating the use, in any investigation or proceedings, of property in which the inextricably linked property is comprised.

(6) Property is inextricably linked for the purposes of this section if it falls within subsection (3) (c) and but for the provisions of this section a requirement to return the property would arise.

(7) References in this Part to any item or material being comprised in other property include references to its being mixed with that other property.

(8) In this section, references to whether or not it is reasonably practicable to separate part of the seized property from the rest of it are references

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to whether or not it is reasonably practicable to do so without prejudicing the use of that property for any lawful purpose.

**Obligation to return items**

**21.** (1) This section applies to any power of seizure (including section 18 of this Law) conferred on a police officer by or under any enactment, including any enactment coming into force after the date of commencement of this Law.

(2) If, at any time after a seizure of anything has been made following the exercise of a power of seizure, it appears to the police officer for the time being having possession of the seized property that the property -

- (a) is an item subject to legal professional privilege, or is special material, or has such an item comprised in it;
- (b) in a case where the item is comprised in something else which has been lawfully seized, it is not reasonably practicable for the item to be separated from the rest of that property; and
- (c) its retention is not authorised by section 22;

that police officer shall ensure that the item is returned as soon as reasonably practicable after the seizure.

**Retention of property seized under section 18**

**22.** (1) Property seized by a police officer under section 18 may be retained to the extent that there are reasonable grounds for believing that it is necessary for it to be retained in order to prevent its being concealed, lost, damaged, altered or destroyed; and -

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- (a) that it is property obtained in consequence of the commission of an offence; or
- (b) that it is evidence in relation to any offence.

(2) Nothing in this section authorises the retention of anything at any time after an obligation to return it has arisen under this Law.

**Persons to whom seized property is to be returned**

23. (1) When anything has been seized in exercise of any power of seizure (including section 18 of this Law), and there is an obligation under this Part for the whole or any part of the seized property to be returned, the obligation to return it shall (subject to the following provisions of this section) be an obligation to return it to the person from whom it was seized.

(2) Where -

- (a) a police officer is obliged under this Part to return anything that has been seized to the person from whom it was seized, and
- (b) the police officer under that obligation is satisfied that some other person has a better right to that thing than the person from whom it was seized,

he shall return it to that other person.

(3) Where different persons claim to be entitled to the return of anything that is required to be returned under this Part, that thing may be retained

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for as long as is reasonably necessary for the determination in accordance with subsection (2) of the person to whom it must be returned.

(4) Where the power of seizure was exercised in relation to property found on any premises, references in this section to a person from whom something has been seized are references to the occupier of the premises at the time of the seizure.

(5) References in this section to the occupier of any premises at the time of a seizure, in relation to a case in which -

- (a) a notice in connection with the entry or search of the premises in question, or with the seizure, was given to a person appearing in the occupier's absence to be in charge of the premises, and
- (b) it is practicable, for the purpose of returning something that has been seized, to identify that person but not to identify the occupier of the premises,

are references to that person.

*Interpretation of Part II - Supplementary*

**Meaning of “items subject to legal professional privilege”**

24. (1) Subject to subsection (2) in this Law “items subject to legal professional privilege” means -

- (a) communications between a professional legal adviser and his client or any person representing his client

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made in connection with the giving of legal advice to the client;

(b) communications between a professional legal adviser and his client or any person representing his client or between such an adviser or his client or any such representative and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and

(c) items enclosed with or referred to in such communications and made -

(i) in connection with the giving of legal advice; or

(ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings,

when they are in the possession of a person who is entitled to possession of them.

(2) Items held with the intention of furthering a criminal purpose are not items subject to legal professional privilege.

**Meaning of “special material”**

**25.** (1) Subject to the following provisions of this section, in this Law “special material” means -

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- (a) any material, including personal records, which a person has acquired or created in the course of any trade, business, profession or other occupation or for the purposes of any paid or unpaid office and which he holds in confidence;
- (b) human tissue or tissue fluid which has been taken for the purposes of diagnosis or medical treatment and which a person holds in confidence;
- (c) journalistic material, including such material held in confidence, which consists of documents, or of records other than documents.

(2) Subject to the provisions of subsection (3), a person holds material in confidence for the purposes of this Law if he holds it subject -

- (a) to an express or implied undertaking to hold it in confidence; or
- (b) to a restriction on disclosure or an obligation of secrecy contained in any enactment, including an enactment coming into force after the date of commencement of this Law.

(3) A person holds journalistic material in confidence for the purposes of this Law if -

- (a) he holds it subject to such an undertaking, restriction or obligation as is described in subsection (2); and

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(b) it has been continuously held (by one or more persons) subject to such an undertaking, restriction or obligation since it was first acquired or created for the purposes of journalism.

(4) Where material is acquired by an employee from his employment and in the course of his employment or by a company from an associated company, it is only special material if it was special material immediately before the acquisition.

(5) Where material is created by an employee in the course of his employment, it is only special material if it would have been special material had his employer created it.

(6) Where material is created by a company on behalf of an associated company, it is only special material if it would have been special material had the associated company created it.

(7) A company is to be treated as another's associated company for the purposes of this section if it would be so treated under section 23(5)(a) of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000<sup>e</sup>, and for the purposes of this subsection references in the said section 23(5)(a) to the licensed fiduciary shall be construed as references to that other company.

**Meaning of “personal records”**

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<sup>e</sup> Order in Council No. I of 2001

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26. In this Law “personal records” means documentary and other records concerning an individual (whether living or dead) who can be identified from them and relating -

- (a) to his physical or mental health;
- (b) to spiritual counselling or assistance given or to be given to him; or
- (c) to counselling or assistance given or to be given to him, for the purposes of his personal welfare, by any voluntary organisation or by any individual who -
  - (i) by reason of his office or occupation has responsibilities for his personal welfare; or
  - (ii) by reason of an order of a court has responsibilities for his supervision.

**Meaning of “journalistic material”**

27. (1) Subject to subsection (2) in this Law “journalistic material” means material acquired or created for the purposes of journalism.

(2) Material is only journalistic material for the purposes of this Law if it is in the possession of a person who acquired or created it for the purposes of journalism.

(3) A person who receives material from someone who intends that the recipient shall use it for the purposes of journalism is to be taken to have acquired it for those purposes.

**PART III**

**ARREST**

**Arrest without warrant for arrestable offences**

**28.** (1) The powers of summary arrest conferred by the following subsections shall apply -

- (a) to offences for which the sentence is fixed by law;
- (b) to offences for which a person of 21 years of age or over (not previously convicted) may be sentenced to imprisonment;

and in this Law “arrestable offence” means any such offence.

(2) The powers of summary arrest conferred by the following subsections shall also apply to the offences of -

- (a) conspiring to commit any of the offences mentioned in subsection (1);
- (b) attempting to commit any such offence;
- (c) inciting, aiding, abetting, counselling or procuring the commission of any such offence;

and such offences are also arrestable offences for the purposes of this Law.

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- (3) Any person may arrest without a warrant -
- (a) anyone who is in the act of committing an arrestable offence;
  - (b) anyone whom he has reasonable grounds for suspecting to be committing such an offence.

(4) Where an arrestable offence has been committed, any person may arrest without a warrant -

- (a) anyone who is guilty of the offence;
- (b) anyone whom he has reasonable grounds for suspecting to be guilty of it.

(5) Where a police officer has reasonable grounds for suspecting that an arrestable offence has been committed, he may arrest without a warrant anyone whom he has reasonable grounds for suspecting to be guilty of the offence.

- (6) A police officer may arrest without a warrant -
- (a) anyone who is about to commit an arrestable offence;
  - (b) anyone whom he has reasonable grounds for suspecting to be about to commit an arrestable offence.

**General arrest conditions**

- 29.** (1) Where a police officer has reasonable grounds for suspecting

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that any offence which is not an arrestable offence has been committed or attempted, or is being committed or attempted, he may arrest the relevant person if it appears to him that service of a summons is impracticable or inappropriate because any of the general arrest conditions is satisfied.

(2) In this section “the relevant person” means any person whom the police officer has reasonable grounds to suspect of having committed or having attempted to commit the offence or of being in the course of committing or attempting to commit it.

(3) The general arrest conditions are -

- (a) that the name of the relevant person is unknown to, and cannot be readily ascertained by, the police officer;
- (b) that the police officer has reasonable grounds for doubting whether a name furnished by the relevant person as his name is his real name;
- (c) that -
  - (i) the relevant person has failed to furnish a satisfactory address for service; or
  - (ii) the police officer has reasonable grounds for doubting whether an address furnished by the relevant person is a satisfactory address for service;

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- (d) that the police officer has reasonable grounds for believing that arrest is necessary to prevent the relevant person -
  - (i) causing physical injury to himself or any other person;
  - (ii) suffering physical injury;
  - (iii) causing loss of or damage to property;
  - (iv) committing an offence against public decency;  
or
  - (v) causing an unlawful obstruction of the highway;
- (e) that the police officer has reasonable grounds for believing that arrest is necessary to protect a child or other vulnerable person from the relevant person.

(4) For the purposes of subsection (3) an address is a satisfactory address for service if it appears to the police officer -

- (a) that the relevant person will be at it for a sufficiently long period for it to be possible to serve him with a summons; or
- (b) that some other person specified by the relevant person will accept service of a summons for the relevant

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person at it.

(5) Nothing in subsection (3)(d) authorises the arrest of a person under subparagraph (iv) of that paragraph except where members of the public going about their normal business cannot reasonably be expected to avoid the person to be arrested.

(6) This section shall not prejudice any power of arrest conferred apart from this section.

**Repeal of statutory powers of arrest without warrant or order**

**30.** (1) Subject to subsection (2), so much of any enactment in force before the commencement of this Law as enables a police officer -

- (a) to arrest a person for an offence without a warrant; or
- (b) to arrest a person otherwise than for an offence without a warrant or an order of a court,

shall cease to have effect.

(2) Nothing in subsection (1) affects the enactments specified in Schedule 3 to this Law.

**Fingerprinting of certain offenders**

**31.** (1) If a person -

- (a) has been convicted of an arrestable offence;
- (b) has not at any time been in police detention for the

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offence; and

- (c) has not had his fingerprints taken -
  - (i) in the course of the investigation of the offence by the police; or
  - (ii) since the conviction,

any police officer may at any time not later than one month after the date of the conviction require him to attend a police station in order that his fingerprints may be taken.

(2) Where a person convicted of an arrestable offence has already had his fingerprints taken as mentioned in paragraph (c) of subsection (1) above, that fact, together with any time when he has been in police detention for the offence, shall be disregarded for the purposes of that subsection if -

- (a) the fingerprints taken on the previous occasion do not constitute a complete set of his fingerprints; or
- (b) some or all of the fingerprints taken on the previous occasion are not of sufficient quality to allow satisfactory analysis, comparison or matching.

(3) A requirement under subsection (1) -

- (a) shall give the person a period of at least 7 days within which he must so attend; and

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(b) may direct him to so attend at a specified time of day or between specified times of day.

(4) Any police officer may arrest without warrant a person who has failed to comply with a requirement under subsection (1).

(5) The Committee for Home Affairs may by regulations make provision for recording in police records convictions for arrestable offences and for such offences as are specified in the regulations.

**Information to be given on arrest**

32. (1) Subject to subsection (5), where a person is arrested otherwise than by being informed that he is under arrest, the arrest is not lawful unless the person arrested is informed that he is under arrest as soon as is practicable after his arrest.

(2) Where a person is arrested by a police officer, subsection (1) applies regardless of whether the fact of the arrest is obvious.

(3) Subject to subsection (5), no arrest is lawful unless the person arrested is informed of the ground for the arrest at the time of, or as soon as is practicable after, the arrest.

(4) Where a person is arrested by a police officer, subsection (3) applies regardless of whether the ground for the arrest is obvious.

(5) Nothing in this section is to be taken to require a person to be informed -

(a) that he is under arrest; or

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(b) of the ground for the arrest,

if it was not reasonably practicable for him to be so informed by reason of his having escaped from arrest before the information could be given.

**Voluntary attendance at police station etc.**

33. Where for the purpose of assisting with an investigation a person attends voluntarily at a police station or at any other place where a police officer is present or accompanies a police officer to a police station or any such other place without having been arrested -

- (a) he shall be entitled to leave at will unless he is placed under arrest;
- (b) he shall be informed at once that he is under arrest if a decision is taken by a police officer to prevent him from leaving at will.

**Arrest elsewhere than at police station**

34. (1) Subject to the following provisions of this section, where a person -

- (a) is arrested by a police officer for an offence; or
- (b) is taken into custody by a police officer after being arrested for an offence by a person other than a police officer,

at any place other than a police station, he shall be taken to a designated place of

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detention by a police officer as soon as practicable after the arrest.

(2) A person arrested by a police officer at a place other than a police station shall be released if a police officer is satisfied, before the person arrested reaches a designated place of detention, that there are no grounds for keeping him under arrest.

(3) A police officer who releases a person under subsection (2) above shall record the fact that he has done so and shall make the record as soon as is practicable after the release.

(4) Nothing in subsection (1) shall prevent a police officer delaying taking a person who has been arrested to a designated place of detention if the presence of that person elsewhere is necessary in order to carry out such investigations as it is reasonable to carry out immediately.

(5) Where there is delay in taking a person who has been arrested to a designated place of detention after his arrest, the reasons for the delay shall be recorded when he first arrives at a designated place of detention.

(6) Nothing in subsection (1) shall be taken to affect -

(a) paragraph 16(3) or 18(1) of Schedule 2 to the Immigration Act 1971<sup>f</sup>; or

(b) any provision of the Terrorism and Crime (Bailiwick

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<sup>f</sup> An Act of Parliament (1971 c.77); extended to the Bailiwick by the Immigration (Guernsey) Order 1993 (No. 1796).

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of Guernsey) Law, 2002<sup>g</sup>;

(7) Nothing in subsection (3) shall be taken to affect paragraph 18(3) of Schedule 2 to the Immigration Act 1971.

**Arrest for further offence**

**35.** Where -

- (a) a person has been arrested for an offence and is at a designated place of detention in consequence of that arrest; and
- (b) it appears to a police officer that, if he were released from that arrest, he would be liable to arrest for some other offence,

he shall be arrested for that other offence.

**Search upon arrest**

**36.** (1) A police officer may search an arrested person, in any case where the person to be searched has been arrested at a place other than a police station, if the police officer has reasonable grounds for believing that the arrested person may present a danger to himself or others.

(2) Subject to subsections (3) to (7) a police officer shall also have power in any such case -

<sup>g</sup> Order in Council No. XVI of 2002.

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- (a) to search the arrested person for anything -
  - (i) which he might use to assist him to escape from lawful custody; or
  - (ii) which might be evidence relating to an offence; and
- (b) to enter and search any premises in which he was when arrested or immediately before he was arrested for evidence relating to the offence for which he has been arrested.

(3) The power to search conferred by subsection (2) is only a power to search to the extent that is reasonably required for the purpose of discovering any such thing or any such evidence.

(4) The powers conferred by this section to search a person are not to be construed as authorising a police officer to require a person to remove any of his clothing in public other than an outer coat, jacket, headgear or gloves but they do authorise a search of a person's mouth.

(5) A police officer may not search a person in the exercise of the power conferred by subsection (2)(a) unless he has reasonable grounds for believing that the person to be searched may have concealed on him anything for which a search is permitted under that paragraph.

(6) A police officer may not search premises in the exercise of the power conferred by subsection (2)(b) unless he has reasonable grounds for believing that there is evidence for which a search is permitted under that paragraph

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on the premises.

(7) In so far as the power of search conferred by subsection (2)(b) relates to premises consisting of two or more separate dwellings, it is limited to a power to search -

- (a) any dwelling in which the arrest took place or in which the person arrested was immediately before his arrest; and
- (b) any parts of the premises which the occupier of any such dwelling uses in common with the occupiers of any other dwellings comprised in the premises.

(8) A police officer searching a person in the exercise of the power conferred by subsection (1) may seize and retain anything he finds, if he has reasonable grounds for believing that the person searched might use it to cause physical injury to himself or to any other person.

(9) A police officer searching a person in the exercise of the power conferred by subsection (2)(a) may seize and retain anything he finds, other than an item subject to legal professional privilege, if he has reasonable grounds for believing -

- (a) that he might use it to assist him to escape from lawful custody; or
- (b) that it is evidence of an offence or has been obtained in consequence of the commission of an offence.

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(10) Nothing in this section shall be taken to affect the power conferred by section 44 of the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002.

**PART IV**

**DETENTION**

*Detention - conditions and duration*

**Limitations on detention**

37. (1) A person arrested for an offence shall not be kept in police detention except in accordance with the provisions of this Part of this Law.

(2) Subject to subsection (3), if at any time a custody officer -

(a) becomes aware, in relation to any person in police detention, that the grounds for detention of that person have ceased to apply; and

(b) is not aware of any other grounds on which the continued detention of that person could be justified under the provisions of this Part of this Law,

it shall be the duty of the custody officer, subject to subsection (4), to order his immediate release from custody.

(3) No person in police detention shall be released except on the authority of a custody officer at the designated place of detention where his detention was authorised or, if it was authorised at more than one place, a custody

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officer at the place where it was last authorised.

(4) A person who appears to the custody officer to have been unlawfully at large when he was arrested is not to be released under subsection (2).

(5) A person who is released under subsection (2) shall be released without bail unless it appears to the custody officer -

(a) that there is need for further investigation of any matter in connection with which he was detained at any time during the period of his detention; or

(b) that proceedings may be taken against him in respect of any such matter,

and, if it so appears, he shall be released on bail.

(6) For the purposes of this Part, a person who returns to a police station to answer to bail or is arrested under section 57 shall be treated as arrested for an offence and the offence in connection with which he was granted bail shall be deemed to be that offence.

**Designated places of detention**

**38.** (1) The Chief Officers and the Constable of Sark shall designate premises under their control which are to be used for the purpose of detaining arrested persons.

(2) Premises designated under section (1) shall provide enough accommodation for that purpose.

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- (3) The Chief Officers and the Constable -
- (a) may designate premises which were not previously designated; and
  - (b) may direct that a designation of premises previously made shall cease to operate.

(4) In this Law “designated place of detention” means premises for the time being designated under this section.

**Custody officers at designated places of detention – Guernsey and Alderney**

**39.** (1) The provisions of this section shall apply to designated places of detention in Guernsey and Alderney.

(2) One or more custody officers shall be appointed for each designated place of detention.

(3) The Chief Officers shall appoint officers under their command who are to act as custody officers for designated places of detention.

(4) No officer may be appointed a custody officer unless he is of at least the rank of sergeant.

(5) An officer of any rank may perform the functions of a custody officer at a designated place of detention if a custody officer is not readily available to perform them.

(6) Subject to the following provisions of this section and to section 44(2), none of the functions of a custody officer in relation to a person shall

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be performed by an officer who at the time when the function falls to be performed is involved in the investigation of an offence for which the person is in police detention at that time.

(7) Nothing in subsection (6) is to be taken to prevent a custody officer -

- (a) performing any function assigned to custody officers by this Law or by a Code of Practice issued under this Law;
- (b) carrying out the duty imposed on custody officers by section 44;
- (c) doing anything in connection with the identification of a suspect; or
- (d) doing anything under section 3 of the Road Traffic (Drink Driving) (Guernsey) Law, 1989<sup>h</sup>.

(8) References to a custody officer in the following provisions of this Law include references to an officer other than a custody officer who is performing the functions of a custody officer by virtue of subsection (5).

**Custody Officers - Sark**

**40.** (1) The functions of a custody officer for a designated place of detention in the Island of Sark shall be performed by -

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<sup>h</sup> Ordres en Conseil, Vol. XXXI, p.512

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- (a) the Constable, the Assistant Constable or the Vingtenier; or
- (b) a person appointed by either of the Chief Officers to act as custody officer for a designated place of detention in Sark.

(2) So far as is practicable, and subject to section 44(2), none of the functions of a custody officer in relation to a person shall be performed by an officer who at the time when the function falls to be performed is involved in the investigation of an offence for which the person is in police detention at that time.

**Transfer of detained persons from Alderney and Sark**

41. Upon an application by a custody officer, the appropriate judicial officer may authorise the transfer of a person who -

- (a) has not been charged with an offence; and
- (b) is in police detention in a designated place of detention in Alderney or Sark,

to a designated place of detention in Guernsey.

**Duties of custody officer before charge**

42. (1) Where a person is arrested for an offence the custody officer at each designated place of detention where he is detained after his arrest shall determine whether he has before him sufficient evidence to charge that person with the offence for which he was arrested and may detain him at the designated place of detention for such a period as is necessary to enable him to do so.

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(2) If the custody officer determines that he does not have such evidence before him, the person arrested shall be released either on bail or without bail, unless the custody officer has reasonable grounds for believing that his detention without being charged is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him.

(3) If the custody officer has reasonable grounds for so believing, he may authorise the person arrested to be kept in police detention.

(4) Where a custody officer authorises a person who has not been charged to be kept in police detention, he shall, as soon as is practicable, make a written record of the grounds for the detention.

(5) Subject to subsection (6), the written record shall be made in the presence of the person arrested who shall at that time be informed by the custody officer of the grounds for his detention.

(6) Subsection (5) shall not apply where the person arrested is, at the time when the written record is made -

- (a) incapable of understanding what is said to him;
- (b) violent or likely to become violent; or
- (c) in urgent need of medical attention.

(7) Subject to section 48 (5), if the custody officer determines that he has before him sufficient evidence to charge the person arrested with the offence

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for which he was arrested, the person arrested shall be -

- (a) charged; or
- (b) released without charge, either on bail or without bail.

(8) Where a person is released under subsection (7) (b) and at the time of his release a decision whether he should be prosecuted for the offence for which he was arrested has not been taken, it shall be the duty of the custody officer so to inform him.

(9) If the person arrested is not in a fit state to be dealt with under subsection (7), he may be kept in police detention until he is.

(10) The duty imposed on the custody officer under subsection (1) shall be carried out by him as soon as practicable after the person arrested arrives at the designated place of detention or, in the case of a person arrested at the designated place of detention, as soon as practicable after the arrest.

**Duties of custody officer after charge**

43. (1) Where a person arrested for an offence is charged with an offence, the custody officer shall order his release from police detention, either on bail or without bail, unless -

- (a) if the person arrested is not a juvenile -
  - (i) his name or address cannot be ascertained or the custody officer has reasonable grounds for doubting whether a name or address furnished by him as his name or address is his real name

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or address;

- (ii) the custody officer has reasonable grounds for believing that the person arrested will fail to appear in court when required to do so;
- (iii) in the case of a person arrested for an imprisonable offence, the custody officer has reasonable grounds for believing that the detention of the person arrested is necessary to prevent him from committing an offence;
- (iv) in the case of a person who has attained the age of 18, the custody officer has reasonable grounds for believing that the detention of the person is necessary to enable a sample to be taken from him under section 71;
- (v) in the case of a person arrested for an offence which is not an imprisonable offence, the custody officer has reasonable grounds for believing that the detention of the person arrested is necessary to prevent him from causing physical injury to another person or from causing loss of or damage to property;
- (vi) the custody officer has reasonable grounds for believing that the detention of the person arrested is necessary to prevent him from interfering with the administration of justice or

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with the investigation of offences or of a particular offence, or

(vii) the custody officer has reasonable grounds for believing that the detention of the person arrested is necessary for his own protection; or

(b) if he is a juvenile -

(i) any of the requirements of paragraph (a) above is satisfied; or

(ii) the custody officer has reasonable grounds for believing that he ought to be detained in his own interests.

(2) If the release of a person arrested is not required by subsection (1) the custody officer may authorise him to be kept in police detention but may not authorise him to be kept in police detention by virtue of subsection (1)(a)(iv) after the end of the period of six hours beginning when he was charged with the offence.

(3) The custody officer, in taking the decisions required by subsection (1) (a) and (b) (except for (a) (i) and (vi) and (b) (ii)), shall have regard to the same considerations as those which he is required to have regard to in section 55(2).

(4) Where a custody officer authorises a person who has been charged to be kept in police detention, he shall, as soon as practicable, make a written record of the grounds for the detention.

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(5) Subject to subsection (6), the written record shall be made in the presence of the person charged who shall at that time be informed by the custody officer of the grounds for his detention.

(6) Subsection (5) shall not apply where the person charged is, at the time when the written record is made -

- (a) incapable of understanding what is said to him;
- (b) violent or likely to become violent; or
- (c) in urgent need of medical attention.

(7) In this section, 'a juvenile' means a person who is or who appears to be under the age of 17 years.

**Responsibilities in relation to persons detained**

**44.** (1) Subject to subsections (2) and (4), it shall be the duty of the custody officer at a designated place of detention to ensure -

- (a) that all persons in police detention at that place are treated in accordance with this Law and any code of practice issued under it and relating to the treatment of persons in police detention; and
- (b) that all matters relating to such persons which are required by this Law or by such codes of practice to be recorded are recorded in the custody records relating to such persons.

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(2) If the custody officer, in accordance with any code of practice issued under this Law, transfers or permits the transfer of a person in police detention-

- (a) to the custody of an officer investigating an offence for which that person is in police detention; or
- (b) to the custody of an officer who has charge of that person outside the designated place of detention,

the custody officer shall cease in relation to that person to be subject to the duty imposed on him by subsection (1)(a); and it shall be the duty of the officer to whom the transfer is made to ensure that he is treated in accordance with the provisions of this Law and of any such codes of practice as are mentioned in subsection (1).

(3) If the person detained is subsequently returned to the custody of the custody officer, it shall be the duty of the officer investigating the offence or (as the case may be) the officer who had charge of that person outside the designated place of detention, to report to the custody officer as to the manner in which this section and the codes of practice have been complied with while that person was in his custody.

(4) Where -

- (a) an officer of higher rank or grade than the custody officer gives directions relating to a person in police detention; and
- (b) the directions are at variance -

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- (i) with any decision made or action taken by the custody officer in the performance of a duty imposed on him under this Part of this Law; or
- (ii) with any decision or action which would but for the directions have been made or taken by him in the performance of such a duty,

the custody officer shall refer the matter at once to an officer of at least the rank of chief inspector or above.

**Review of detention - Guernsey and Alderney**

**45.** (1) This section shall apply to persons held in police detention in Guernsey and Alderney.

(2) Reviews of the detention of each person in police detention in connection with the investigation of an offence shall be carried out periodically in accordance with the following provisions of this section -

- (a) in the case of a person who has been arrested and charged, by the custody officer; and
- (b) subject to subsection (9), in the case of a person who has been arrested but not charged, by an officer of at least the rank of inspector who has not been directly involved in the investigation.

(3) The officer to whom it falls to carry out a review is referred to in this section as a “review officer”.

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- (4) Subject to subsection (5) -
  - (a) the first review shall be not later than six hours after the detention was first authorised;
  - (b) the second review shall be not later than nine hours after the first;
  - (c) subsequent reviews shall be at intervals of not more than nine hours.
  
- (5) A review may be postponed -
  - (a) if, having regard to all the circumstances prevailing at the latest time for it specified in subsection (4), it is not practicable to carry out the review at that time;
  - (b) without prejudice to the generality of paragraph (a) -
    - (i) if at that time the person is being questioned by a police officer and the review officer is satisfied that an interruption of the questioning for the purpose of carrying out the review would prejudice the investigation in connection with which he is being questioned, or
    - (ii) if at that time no review officer is readily available.

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(6) If a review is postponed under subsection (5) it shall be carried out as soon as practicable after the latest time specified for it in subsection (4).

(7) If a review is carried out after postponement under subsection (5), the fact that it was so carried out shall not affect any requirement of this section as to the time at which any subsequent review is to be carried out.

(8) The review officer shall record the reasons for any postponement of a review in the custody record.

(9) The review officer for the first review may be a police officer of at least the rank of sergeant who has not been directly involved in the investigation.

(10) Subject to subsection (11), where the person whose detention is under review has not been charged before the time of the review, section 42(1) to (6) shall have effect in relation to him, but with the substitution -

(a) of references to the person whose detention is under review for references to the person arrested; and

(b) of references to the review officer for references to the custody officer.

(11) Where a person has been kept in police detention by virtue of section 42 (9), section 42 (1) to (6) shall not have effect in relation to him but it shall be the duty of the review officer to determine whether he is yet in a fit state.

(12) Where the person whose detention is under review has been

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charged before the time of the review, section 43 (1) to (6) shall have effect in relation to him, with the substitution of references to the person whose detention is under review for references to the person arrested.

(13) Where -

(a) an officer of a higher rank than the review officer gives directions relating to a person in police detention; and

(b) the directions are at variance -

(i) with any decision made or action taken by the review officer in the performance of any duty imposed on him under this Part of this Law, or

(ii) with any decision or action which would but for the directions have been made or taken by him in the performance of such a duty,

the review officer shall refer the matter at once to an officer of at least the rank of chief inspector.

(14) Before determining whether to authorise a person's continued detention the review officer shall give -

(a) the person (unless he is asleep);

(b) any Advocate representing him who is available at the time of the review,

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an opportunity to make representations to him about the detention.

(15) Subject to subsection (16), the person whose detention is under review or his Advocate may make representations under subsection (14) either orally or in writing.

(16) The review officer may refuse to hear oral representations from the person whose detention is under review if he considers that the person is unfit to make such representations by reason of his condition or behaviour.

**Review of detention - Sark**

**46.** (1) This section shall apply to persons held in police detention in the Island of Sark.

(2) Reviews of the detention of each person in police detention in connection with the investigation of an offence shall be carried out periodically in accordance with the provisions of this section by -

- (a) in the case of a person who has been arrested and charged, by the person performing the functions of custody officer in accordance with section 40; and
- (b) in the case of a person who has been arrested but not charged, by -
  - (i) the Seneschal or his deputy; or
  - (ii) an officer of at least the rank of inspector appointed by either of the Chief Officers.

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(3) The person to whom it falls to carry out a review under this section is referred to as the “reviewer”.

(4) Subject to subsection (5) -

(a) the first review shall be not later than nine hours after the detention was first authorised;

(b) the second review shall be not later than six hours after the first;

(c) subsequent reviews shall be at intervals of not more than nine hours.

(5) A review may be postponed -

(a) if, having regard to all the circumstances prevailing at the latest time for it specified in subsection (4), it is not practicable to carry out the review at that time;

(b) without prejudice to the generality of paragraph (a) -

(i) if at that time the person is being questioned by an officer and the reviewer is satisfied that an interruption of the questioning for the purpose of carrying out the review would prejudice the investigation in connection with which he is being questioned, or

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(ii) if at that time no reviewer is readily available.

(6) If a review is postponed under subsection (5) it shall be carried out as soon as practicable after the latest time specified for it in subsection (4).

(7) If a review is carried out after postponement under subsection (5), the fact that it was so carried out shall not affect any requirement of this section as to the time at which any subsequent review is to be carried out.

(8) The reviewer shall record the reasons for any postponement of a review in the custody record.

(9) Subject to subsection (10), where the person whose detention is under review has not been charged before the time of the review, section 42(1) to (6) shall have effect in relation to him, but with the substitution -

- (a) of references to the person whose detention is under review for references to the person arrested; and
- (b) of references to the reviewer for references to the custody officer.

(10) Where a person has been kept in police detention by virtue of section 42 (9), section 42 (1) to (6) shall not have effect in relation to him but it shall be the duty of the reviewer to determine whether he is yet in a fit state.

(11) Where the person whose detention is under review has been charged before the time of the review, section 43 (1) to (6) shall have effect in relation to him, with the substitution of references to the person whose detention is

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under review for references to the person arrested.

(12) Where in relation to a review carried out under subsection (2)(a)(ii) -

(a) an officer of a higher rank than the review officer gives directions relating to a person in police detention; and

(b) the directions are at variance -

(i) with any decision made or action taken by the review officer in the performance of any duty imposed on him under this Part of this Law, or

(ii) with any decision or action which would but for the directions have been made or taken by him in the performance of such a duty,

the review officer shall refer the matter at once to an officer of at least the rank of chief inspector.

(13) Before determining whether to authorise a person's continued detention the reviewer shall give -

(a) the person (unless he is asleep);

(b) any Advocate representing him who is available at the time of the review,

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an opportunity to make representations to him about the detention.

(14) Subject to subsection (15), the person whose detention is under review or his Advocate may make representations either orally in writing.

(15) The reviewer may refuse to hear oral representations from the person whose detention is under review if he considers that the person is unfit to make such representations by reason of his condition or behaviour.

**Use of telephone for review under sections 45 and 46**

47. (1) This section applies, notwithstanding anything in sections 45 and 46, where in the case of a person who has been arrested but not charged it is not reasonably practicable –

- (a) in the case of a person held in a designated place of detention in Guernsey or Alderney, for a police officer of at least the rank of inspector; or
- (b) in the case of a person held in a designated place of detention in Sark, the Seneschal, his deputy, or a police officer of at least the rank of inspector;

to be present in the designated place of detention where that person is held to carry out any review of that person's detention that is required by subsection (2)(b) of section 45 or 46.

(2) Subject to subsection (5), the review may be carried out by a police officer of at least the rank of inspector who has access to a means of communication by telephone to persons in the designated place of detention where the arrested person is held.

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(3) Where any review is carried out under this section by an officer who is not present at the place where the arrested person is held -

(a) any obligation of that officer to make a record in connection with the carrying out of the review shall have effect as an obligation to cause another police officer to make the record;

(b) any requirement for the record to be made in the presence of the arrested person shall apply to the making of that record by that other police officer; and

(c) the requirements under section 45 (13) and (14) and section 46 (11) and (12) for -

(i) the arrested person, or

(ii) an Advocate representing him,

to be given any opportunity to make representations (whether in writing or orally) to that officer shall have effect as a requirement for that person, or such an Advocate, to be given an opportunity to make representations in a manner authorised by subsection (4).

(4) Representations are made in a manner authorised by this subsection -

(a) in a case where facilities exist for the immediate transmission of written representations to the officer

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carrying out the review, if they are made either -

- (i) orally by telephone to that officer; or
  - (ii) in writing to that officer by means of those facilities; or
- (b) in any other case, if they are made orally by telephone to that officer.

(5) The first review may be carried out by a police officer of at least the rank of sergeant who has not been directly involved in the investigation.

**Limits on period of detention without charge**

**48.** (1) Subject to the following provisions of this section and to sections 49 and 50, a person shall not be kept in police detention for more than 24 hours without being charged.

(2) The time from which the period of detention of a person is to be calculated (in this Law referred to as “**the relevant time**”) -

- (a) in the case of a person arrested outside the Bailiwick of Guernsey, shall be -
  - (i) the time at which that person first arrives at a designated place of detention in the Bailiwick of Guernsey, or
  - (ii) the time 24 hours after the time of that person's entry into the Bailiwick of Guernsey,

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whichever is the earlier;

(b) in the case of a person who -

(i) attends voluntarily at a police station, or

(ii) accompanies a police officer without having been arrested,

and is arrested at the police station, shall be the time of his arrest;

(c) in any other case shall be -

(i) the time at which that person arrives at the designated place of detention, or

(ii) the time 24 hours after the time of that person's arrest,

whichever is the earlier.

(3) Subsection (2) shall have effect in relation to a person arrested under section 35 as if every reference in it to his arrest or his being arrested were a reference to his arrest or his being arrested for the offence for which he was originally arrested.

(4) When a person who is in police detention is removed to hospital because he is in need of medical treatment, any time during which he is

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being questioned in hospital or on the way there or back by an officer for the purpose of obtaining evidence relating to an offence shall be included in any period which falls to be calculated for the purposes of this Part of this Law, but any other time while he is in hospital or on his way there or back shall not be so included.

(5) Subject to subsection (6), a person who at the expiry of 24 hours after the relevant time is in police detention and has not been charged shall be released at that time either on bail or without bail.

(6) Subsection (5) does not apply to a person whose detention for more than 24 hours after the relevant time has been authorised or is otherwise permitted in accordance with sections 49 and 50.

(7) A person released under subsection (5) shall not be re-arrested for the offence for which he was previously arrested unless new evidence justifying a further arrest has come to light since his release, but this subsection shall not prevent an arrest under section 57.

**Authorisation of continued detention**

**49.** (1) Where a police officer of the rank of at least chief inspector has reasonable grounds for believing that -

- (a) the detention of that person without charge is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him;
- (b) an offence for which he is under arrest is a serious arrestable offence; and

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- (c) the investigation is being conducted diligently and expeditiously,

he may authorise the keeping of that person in police detention for a period expiring at or before 36 hours after the relevant time.

(2) Where an officer as mentioned in subsection (1) has authorised the keeping of a person in police detention for a period expiring less than the 36 hours after the relevant time, such an officer may authorise the keeping of that person in detention for a further period expiring not more than 36 hours after that time if the conditions specified in subsection (1) are still satisfied when he gives the authorisation.

(3) No authorisation under subsection (1) shall be given in respect of any person -

- (a) more than 24 hours after the relevant time;
- (b) before the second review of detention under section 45 has been carried out if the detained person was arrested in the Bailiwick of Guernsey; or
- (c) before the arrival of the detained person at a designated place of detention in Guernsey if the detained person is transferred from Alderney or Sark.

(4) Where an officer authorises the keeping of a person in police detention under subsection (1), it shall be his duty -

- (a) to inform that person of the grounds for his continued

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detention; and

(b) to record the grounds in that person's custody record.

(5) Before determining whether to authorise the keeping of a person in police detention under subsection (1) or (2), an officer shall give -

(a) that person; or

(b) any Advocate representing him who is available at the time when it falls to the officer to determine whether to give the authorisation,

an opportunity to make representations to him about the detention.

(6) Subject to subsection (7), the person in detention or his Advocate may make representations under subsection (5) either orally or in writing.

(7) The officer to whom it falls to determine whether to give the authorisation may refuse to hear oral representations from the person in detention if he considers that the person is unfit to make such representations by reason of his condition or behaviour.

(8) Where an officer authorises the keeping of a person in detention under subsection (1) and at the time of the authorisation that person has not yet exercised a right conferred on him by sections 64 or 66, the officer -

(a) shall inform him of that right;

(b) shall decide whether he should be permitted to

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exercise it; and

- (c) shall record the decision in his custody record;

and if the decision is to refuse to permit the exercise of the right, the officer shall also record the grounds for the decision in that record.

(9) Where an officer has authorised the keeping of a person who has not been charged in detention under subsection (1) or (2), he shall be released from detention not later than 36 hours after the relevant time unless -

- (a) he has been charged with an offence; or
- (b) his continued detention is authorised or otherwise permitted in accordance with section 50.

(10) A person released under subsection (9) shall not be re-arrested for the offence for which he was previously arrested unless new evidence justifying a further arrest has come to light since his release, but this subsection does not prevent arrest under section 57.

**Warrants of further detention**

**50.** (1) Where on an application on oath made by a police officer and supported by an information, the Magistrate is satisfied that there are reasonable grounds for believing that the further detention of the person to whom the application relates is justified, he may issue a warrant of further detention authorising the keeping of that person in police detention.

(2) An application for a warrant of further detention may not be heard unless the person to whom the application relates -

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- (a) has been furnished with a copy of the information; and
- (b) has been brought before the Magistrate for the hearing.

(3) The person to whom the application relates shall be entitled to be legally represented at the hearing and, if he is not so represented but wishes to be so represented -

- (a) the hearing shall be adjourned to enable him to obtain representation; and
- (b) he may be kept in police detention during the adjournment.

(4) A person's further detention is only justified for the purposes of this section or section 51 below if -

- (a) his detention without charge is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him;
- (b) an offence for which he is under arrest is a serious arrestable offence; and
- (c) the investigation is being conducted diligently and expeditiously.

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(5) Subject to subsection (7), an application for a warrant of further detention may be made -

(a) at any time before the expiry of 36 hours after the relevant time; or

(b) in a case where -

(i) it is not practicable for the Magistrate to sit before or at the expiry of 36 hours after the relevant time; but

(ii) the Magistrate will sit during the 9 hours following the end of that period,

at any time before the expiry of the said 9 hours.

(6) In a case to which subsection (5)(b) applies -

(a) the person to whom the application relates may be kept in police detention until the application is heard; and

(b) the custody officer shall make a note in that person's custody record -

(i) of the fact that he was kept in police detention for more than 36 hours after the relevant time; and

(ii) of the reason why he was so kept.

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(7) If an application for a warrant of further detention is made after the expiry of 36 hours after the relevant time and it appears to the Magistrate that it would have been reasonable for the application to have been made before the expiry of that period, the Magistrate shall dismiss the application.

(8) Where on an application such as is mentioned in subsection (1) above the Magistrate is not satisfied that there are reasonable grounds for believing that the further detention of the person to whom the application relates is justified, he shall -

- (a) refuse the application; or
- (b) adjourn the hearing of it until a time not later than 36 hours after the relevant time.

(9) The person to whom the application relates may be kept in police detention during the adjournment.

(10) A warrant of further detention shall state the time at which it is issued and authorise the keeping in police detention of the person to whom it relates for the period stated in it.

(11) Subject to subsection (12), the period stated in a warrant of further detention shall be such period as the Magistrate thinks fit, having regard to the evidence before him.

(12) The period shall not be longer than 36 hours.

(13) Any information submitted in support of an application under

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this section shall state -

- (a) the nature of the offence for which the person to whom the application relates has been arrested;
- (b) the general nature of the evidence on which that person was arrested;
- (c) what inquiries relating to the offence have been made by the police and what further inquiries are proposed by them;
- (d) the reasons for believing the continued detention of that person to be necessary for the purposes of such further inquiries.

(14) Where an application under this section is refused, the person to whom the application relates shall forthwith be charged or, subject to subsection (15), released, either on bail or without bail.

(15) A person need not be released under subsection (14) -

- (a) before the expiry of 24 hours after the relevant time;  
or
- (b) before the expiry of any longer period for which his continued detention is or has been authorised under section 49.

(16) Where an application under this section is refused, no further

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application shall be made under this section in respect of the person to whom the refusal relates, unless supported by evidence which has come to light since the refusal.

(17) Where a warrant of further detention is issued, the person to whom it relates shall be released from police detention, either on bail or without bail, upon or before the expiry of the warrant unless he is charged.

(18) A person released under subsection (17) shall not be re-arrested for the offence for which he was previously arrested unless new evidence justifying a further arrest has come to light since his release; but this subsection does not prevent an arrest under section 57.

**Extension of warrants of further detention**

**51.** (1) On an application on oath made by a police officer and supported by an information the Magistrate may extend a warrant of further detention issued under section 50 if he is satisfied that there are reasonable grounds for believing that the further detention of the person to whom the application relates is justified.

(2) Subject to subsection (3), the period for which a warrant of further detention may be extended shall be such period as the Magistrate thinks fit, having regard to the evidence before him.

(3) The period shall not be longer than 36 hours or end later than 96 hours after the relevant time.

(4) Where an order of further detention has been extended under subsection (1), or further extended under this subsection, for a period ending before 96 hours after the relevant time, on an application such as is mentioned in that

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subsection the Magistrate may further extend the warrant if he is satisfied as there mentioned; and subsections (2) and (3) shall apply to such further extensions as they apply to extensions under subsection (1).

(5) A warrant of further detention shall, if extended or further extended under this section, be endorsed with a note of the period of the extension.

(6) Subsections (2) and (3) of section 50 shall apply to an application made under this section as they apply to an application made under that section.

(7) Where an application under this section is refused, the person to whom the application relates shall forthwith be charged or, subject to subsection (8) below, released either on bail or without bail.

(8) A person need not be released under subsection (7) before the expiry of any period for which a warrant of further detention issued in relation to him has been extended or further extended on an earlier application made under this section.

*Detention – Bail and miscellaneous*

**Detention after charge**

52. (1) Where a person is charged with an offence and after being charged is kept in police detention, he shall be brought before the appropriate court as soon as is practicable and in any event not later than the first sitting after he is charged with the offence.

(2) Nothing in this section requires a person who is in hospital to be brought before a court if he is not well enough.

**Remands to Police Custody.**

**53.** (1) The Magistrate's Court or the Royal Court sitting as Ordinary Court and exercising its summary jurisdiction may commit a person to detention at a police station for a period not exceeding 3 clear days.

(2) Where a person is committed to detention at a police station under subsection (1) -

- (a) he shall not be kept in such detention unless there is a need for him to be so detained for the purposes of inquiries into other offences;
- (b) if kept in such detention, he shall be brought back before the court as soon as that need ceases;
- (c) whilst kept in such detention he shall be treated as a person in police detention to whom the duties under section 44 relate; and
- (d) his detention shall be subject to periodic review at the times set out in section 45 or 46.

**Remands of suspected drug offenders to customs detention**

**54.** (1) Subject to subsection (3) and to any enactment (including an enactment coming into force after the commencement of this Law) which confers a right to bail, where a person is brought before the Magistrate's Court or the Royal Court sitting as Ordinary Court in the exercise of its summary jurisdiction on a charge of a drugs related offence, the court shall have power to remand him to customs detention, that is to say, commit him to the custody of a customs officer for

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a period not exceeding 192 hours.

(2) The court may, if it considers it appropriate, remand a person under subsection (1) to customs detention for further periods each not exceeding 192 hours.

(3) This section does not apply where a charge is brought against a person under the age of 17.

(4) In this section, a drugs related offence means -

(i) an offence under section 4(2) of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974<sup>i</sup>;

(ii) a drug trafficking offence, within the meaning of the provisions of the Drug Trafficking (Bailiwick of Guernsey) Law, 2000<sup>j</sup>.

**Bail after arrest**

**55.** (1) Subject to the provisions of this section, in this Part of this Law references to “bail” mean references to the release of a person on bail subject to a duty -

(a) to appear before the appropriate court; or

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<sup>i</sup> Ordres en Conseil Vol. XXIV, p273.

<sup>j</sup> Order in Council No. VII of 2000.

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- (b) to attend at such police station or designated place of detention,

at such time as the custody officer may appoint.

(2) Where a custody officer grants bail to a person under this Law, no conditions shall be imposed unless that person has been charged with an offence and it appears to the custody officer that it is necessary to impose conditions for the purpose of preventing that person from -

- (a) failing to surrender to custody;
- (b) committing an offence whilst on bail; or
- (c) interfering with witnesses or otherwise obstructing the course of justice, whether in relation to himself or any other person.

(3) Where a custody officer has granted bail under this Law, he or another custody officer serving at the same designated place of detention may, at the request of the person to whom it was granted, vary the conditions of bail; and in doing so he may impose new conditions or more onerous conditions.

(4) Subsection (2) also applies to any request to a custody officer under subsection (3) to vary the conditions of bail.

(5) Where a custody officer, in relation to any person -

- (a) imposes any conditions in granting bail; or

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- (b) varies any conditions or imposes new conditions of bail,

the custody officer shall give reasons for imposing or varying the conditions, with a view to enabling that person to consider requesting him or another officer, or making an application to the appropriate court, to vary or remove the conditions.

(6) A custody officer who is by virtue of subsection (5) required to give reasons for his decision shall make a note of those reasons and shall give a copy of that note to the person in relation to whom the decision was taken.

(7) Where a custody officer has granted bail to a person subject to a duty to appear at a police station or a designated place of detention, the custody officer may give notice in writing to that person that his attendance at the designated place of detention is not required.

(8) Where a custody officer in relation to any person -

- (a) grants bail under this Law and imposes conditions, or
- (b) varies conditions of bail under subsection (3),

the appropriate court may, on application by or on behalf of that person grant bail or vary the conditions.

(9) On an application under subsection (8), the court, if it grants bail and imposes conditions or if it varies the conditions, may impose more onerous conditions.

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(10) On determining an application under subsection (8), the court shall remand the applicant in custody or on bail in accordance with the determination, and where the court withholds bail or grants bail the grant of bail by the custody officer shall lapse.

**Further provisions after arrest**

**56.** (1) Nothing shall prevent the re-arrest of a person released on bail subject to a duty to attend at a police station or a designated place of detention if new evidence justifying a further arrest has come to light since his release.

(2) Where a person who has been granted bail -

(a) has attended at the police station or designated place of detention in accordance with the grant of bail; or

(b) has been arrested under section 57;

and is detained at a designated place of detention, any time during which he was in police detention prior to being granted bail shall be included as part of any period which falls to be calculated under this Part.

(3) Where a person who was released on bail subject to a duty to attend at a police station is re-arrested, this Part shall apply to him as they apply to a person arrested for the first time, but this subsection does not apply to a person who is arrested under section 57 or has attended a police station in accordance with the grant of bail (and who is accordingly deemed by section 37(6) to have been arrested for an offence).

**Power of arrest for failure to answer to police bail**

**57.** (1) A police officer may arrest without warrant any person who,

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having been released on bail under this Part subject to a duty to attend at a police station or designated place of detention, fails to attend at that place at the time appointed for him to do so.

(2) A person who is arrested under this section shall be taken to a designated place of detention as soon as practicable after the arrest.

(3) For the purposes of sections 34 and 35 an arrest under this section shall be treated as an arrest for an offence.

**Records of detention**

**58.** (1) The Chief Officers shall cause written records to be kept showing on an annual basis -

- (a) the number of persons kept in police or customs detention for more than 24 hours and subsequently released without charge;
- (b) the number of applications for warrants of further detention and the results of the applications; and
- (c) in relation to each warrant of further detention -
  - (i) the period of further detention authorised by it;
  - (ii) the period which the person named in it spent in police detention on its authority; and
  - (iii) whether he was charged or released without charge.

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(2) Every annual report by the Chief Officers shall contain information about the matters mentioned in subsection (1) in respect of the period to which the report relates.

(3) At the Michaelmas meeting of the Chief Pleas of Sark the Constable shall report in writing giving information about the matters mentioned in subsection (1) in respect of persons kept in police detention in Sark during the 12 months preceding the date of the report.

**Detention - supplementary**

**59.** (1) The Magistrate shall hear applications made under sections 50 and 51 of this Law in private.

(2) For the purposes of sections 52 and 55, the appropriate court is-

- (a) in relation to a person detained or bailed to appear in Guernsey, Herm and Jethou, the Magistrate's Court;
- (b) in relation to a person detained or bailed to appear in Alderney, the Court of Alderney;
- (c) in relation to a person detained or bailed to appear in Sark, the Court of the Seneschal of Sark; and
- (d) in relation to a person charged or bailed to appear in the Royal Court sitting as Ordinary Court in the exercise of its summary jurisdiction, that court.

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(3) Any reference in this Part of this Law to a period of time or a time of day is to be treated as approximate only.

(4) For the purposes of this Law, a person is in police detention if

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(a) he has been taken to a police station or a designated place of detention after being arrested for an offence;

(b) he has been arrested at a police station or designated place of detention after attending there voluntarily or accompanying a police officer to it and is detained there; or

(c) he is detained elsewhere in the charge of a police officer,

save that a person who is at court after being charged is not in police detention for these purposes.

(5) For the purposes of sections 50 and 51, **“the Magistrate”** shall include the Chairman of the Court of Alderney and the Seneschal of Sark.

(6) For the purposes of sections 53 and 54, the Ordinary Court shall be properly constituted if it consists of the Bailiff sitting unaccompanied by the Jurats, and where it consists of the Bailiff so sitting, may sit in chambers.

**Savings**

**60.** Nothing in this part of this Law shall affect –

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- (a) the powers conferred on customs officers by section 4 of and Schedule 2 to the Immigration Act 1971;
- (b) the powers conferred by virtue of section 42 of or Schedule 8 to the Terrorism and Crime (Bailiwick of Guernsey) Law, 2000;
- (c) any duty of a police officer under-
  - (i) section 129, 190 or 202 of the Army Act 1955, as applied to the Bailiwick by the Army Act 1955 (Bailiwick of Guernsey) Order, 1996;
  - (ii) section 129, 190 or 202 of the Air Force Act 1955, as applied to the Bailiwick by the Air Force Act 1955 (Bailiwick of Guernsey) Order, 1996; or
  - (iii) section 107 of the Naval Discipline Act 1957, as applied to the Bailiwick by the Naval Discipline Act 1957 (Bailiwick of Guernsey) Order 1996; or
- (d) any right of a person in police detention to apply to a court for a review.

**PART V**

**QUESTIONING AND TREATMENT OF PERSONS BY POLICE**

**Abolition of certain powers of police officers to search persons**

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**61.** (1) Subject to subsection (2), there shall cease to have effect any enactment coming into force before the commencement of this Law in so far as it authorises -

- (a) any search by a police officer of a person in police detention at a police station; or
- (b) an intimate search of a person by a police officer;

and any rule of customary or common law which authorises a search such as is mentioned in paragraph (a) or (b) is abolished.

(2) Nothing in subsection (1)(a) affects -

- (a) the power of a police officer to search persons under section 44 of the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002; or
- (b) the power of a customs officer to search persons under section 72 of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972<sup>k</sup>.

**Searches of detained persons**

**62.** (1) The custody officer at a designated place of detention shall ascertain and record or cause to be recorded everything which a person has with him when he is -

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<sup>k</sup> Ordres en Conseil Vol. XXIII, p573.

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- (a) brought to a designated place of detention after being arrested elsewhere or after being committed to custody by an order or sentence of a court; or
- (b) arrested at the designated place of detention or detained there, as a person falling within section 37(6), under section 42.

(2) In the case of an arrested person the record shall be made as part of his custody record.

(3) Subject to subsection (4), a custody officer may seize and retain any such thing or cause any such thing to be seized and retained.

(4) Clothes and personal effects may only be seized if the custody officer -

- (a) believes that the person from whom they are seized may use them -
  - (i) to cause physical injury to himself or any other person;
  - (ii) to damage property;
  - (iii) to interfere with evidence; or
  - (iv) to assist him to escape; or
- (b) has reasonable grounds for believing that they may be

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evidence relating to an offence.

(5) Where anything is seized, the person from whom it is seized shall be told the reason for the seizure unless he is -

(a) violent or likely to become violent; or

(b) incapable of understanding what is said to him.

(6) Subject to subsection (7), a person may be searched if the custody officer considers it necessary to enable him to carry out his duty under subsection (1) and to the extent that the custody officer considers necessary for the purpose.

(7) A person who is in custody at a police station or is in detention otherwise than at a designated place of detention may at any time be searched in order to ascertain whether he has with him anything which he could use for the purposes specified in subsection (4)(a).

(8) Subject to subsection (9), a police officer may seize and retain, or cause to be seized and retained, anything found on such a search.

(9) A police officer may only seize clothes and personal effects in the circumstances specified in subsection (4).

(10) An intimate search may not be conducted under this section.

(11) A search under this section shall be carried out by a police officer.

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(12) The police officer carrying out a search shall be of the same sex as the person searched.

**Intimate searches in police detention**

**63.** (1) Subject to the following provisions of this section, if a police officer of at least the rank of chief inspector has reasonable grounds for believing -

(a) that a person who has been arrested and is in police detention may have concealed on him anything which -

(i) he could use to cause physical injury to himself or others; and

(ii) he might so use while he is in police detention or in the custody of a court; or

(b) that such a person -

(i) may have a Class A or Class B drug concealed on him; and

(ii) was in possession of it with the appropriate criminal intent before his arrest,

he may authorise an intimate search of that person.

(2) An officer may not authorise an intimate search of a person for any thing unless he has reasonable grounds for believing that it cannot be found without his being intimately searched.

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(3) An officer may give an authorisation under subsection (1) orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.

(4) An intimate search which is only a drug offence search shall be by way of examination by a suitably qualified person.

(5) Except as provided by subsection (4), an intimate search shall be by way of examination by a suitably qualified person, unless an officer of at least the rank of chief inspector considers that this is not practicable.

(6) An intimate search which is not carried out as mentioned in subsection (5) shall be carried out by a police officer.

(7) A police officer may not carry out an intimate search of a person of the opposite sex.

(8) No intimate search may be carried out except -

(a) at a designated place of detention;

(b) at a hospital;

(c) at a recognised medical practitioner's surgery; or

(d) at some other place used for medical purposes.

(9) If an intimate search of a person is carried out, the custody record relating to him shall state which parts of his body were searched and why they were searched.

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(10) The information required to be recorded by subsection (9) shall be recorded as soon as practicable after the completion of the search.

(11) The custody officer may seize and retain any thing which is found during an intimate search of a person, or cause any such thing to be seized and retained -

(a) if he believes that the person from whom it is seized may use it -

(i) to cause physical injury to himself or any other person;

(ii) to damage property;

(iii) to interfere with evidence; or

(iv) to assist him to escape; or

(b) if he has reasonable grounds for believing that it may be evidence relating to an offence.

(12) Where anything is seized under this section, the person from whom it is seized shall be told the reason for the seizure unless he is -

(a) violent or likely to become violent; or

(b) incapable of understanding what is said to him.

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(13) Every annual report of the Chief Officers shall contain information about searches under this section which have been carried out in the Bailiwick during the period to which it relates.

(14) The information about such searches shall include -

- (a) the total number of searches;
- (b) the number of searches conducted by way of examination by a suitably qualified person;
- (c) the number of searches not so conducted but conducted in the presence of such a person; and
- (d) the result of the searches carried out.

(15) The information shall also include, as separate items, the total number of drug offence searches and the results of those searches.

(16) In this section -

**“the appropriate criminal intent”** means an intent to commit an offence under -

- (a) section 5(3) of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974 (possession of a controlled drug with intent to supply to another); or
- (b) section 30 of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972

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(exportation etc. with intent to evade a prohibition or restriction); and

**“drug offence search”** means an intimate search for a Class A or Class B drug which an officer has authorised by virtue of subsection (1)(b).

**Right to have someone informed when arrested**

64. (1) Where a person has been arrested and is being held in custody in a designated place of detention or other premises, he shall be entitled, if he so requests, to have one friend or relative or other person who is known to him or who is likely to take an interest in his welfare told, as soon as is practicable except to the extent that delay is permitted by this section, that he has been arrested and is being detained there.

(2) Delay is only permitted -

- (a) in the case of a person who is in detention for a serious arrestable offence; and
- (b) if a police officer of at least the rank of chief inspector authorises it.

(3) In any case the person in custody must be permitted to exercise the right conferred by subsection (1) within 36 hours from the relevant time, as defined in section 48(2).

(4) An officer may give an authorisation under subsection (2) orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.

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(5) Subject to subsection (6) an officer may only authorise delay where he has reasonable grounds for believing that telling the named person of the arrest -

- (a) will lead to interference with or harm to evidence connected with a serious arrestable offence or interference with or physical injury to other persons;
- (b) will lead to the alerting of other persons suspected of having committed such an offence but not yet arrested for it; or
- (c) will hinder the recovery of any property obtained as a result of such an offence.

(6) A police officer may also authorise delay where the serious arrestable offence is a drug trafficking offence or a money laundering offence and the police officer has reasonable grounds for believing -

- (a) where the offence is a drug trafficking offence, that the detained person has benefited from drug trafficking and that the recovery of the value of that person's proceeds of drug trafficking will be hindered by telling the named person of the arrest; and
- (b) where the offence is a money laundering offence, that the detained person has benefited from the offence and that the recovery of the value of the property obtained by the person from or in connection with the offence

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or of the pecuniary advantage derived by him from or in connection with it will be hindered by telling the named person of the arrest.

(7) If a delay is authorised the detained person shall be told the reason for it and the reason shall be noted on his custody record.

(8) The duties imposed by subsection (7) shall be performed as soon as is practicable.

(9) The rights conferred by this section on a person detained at a designated place of detention or other premises are exercisable whenever he is transferred from one place to another; and this section applies to each subsequent occasion on which they are exercisable as it applies to the first such occasion.

(10) There may be no further delay in permitting the exercise of the right conferred by subsection (1) once the reason for authorising delay ceases to subsist.

(11) Nothing in this section applies to a person arrested or detained under the terrorism provisions.

**Additional rights of children and young persons**

**65.** (1) Where a child or young person is in police detention, any steps which are practicable shall be taken to ascertain the identity of a person responsible for his welfare.

(2) Where the identity of a person responsible for the welfare of the person detained can be ascertained the person responsible shall be informed, as soon as practicable –

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- (a) that the child or young person has been arrested;
- (b) why he has been arrested; and
- (c) where he is being detained.

(3) For the purposes of this section the persons who may be responsible for the welfare of a child or young person are –

- (a) his parent or guardian; or
- (b) any other person who has for the time being assumed responsibility for his welfare.

(4) If it appears that at the time of his arrest a supervision order or fit person order made under the Children and Young Persons (Guernsey) Law, 1967<sup>1</sup> is in force in respect of him, the person responsible for his supervision or care shall also be informed as described in subsection (2) as soon as it is reasonably practicable to do so.

(5) The rights conferred on a child or young person by subsections (2) to (4) are in addition to his rights under section 64.

(6) The reference in subsection (1) to a child or young person who is in police detention includes a reference to a child or young person who has been detained under the terrorism provisions, and in subsection (2) any reference to

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<sup>1</sup> Ordres en Conseil Vol XXI, p34

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arrest includes that detention.

**Access to legal advice**

66. (1) A person arrested and held in custody in a designated place of detention or other premises shall be entitled, if he so requests, to consult an Advocate privately at any time.

(2) Subject to subsection (3), a request under subsection (1) and the time at which it was made shall be recorded in the custody record.

(3) Such a request need not be recorded in the custody record of a person who makes it at a time while he is at a court after being charged with an offence.

(4) If a person makes such a request, he must be permitted to consult an Advocate as soon as is practicable except to the extent that delay is permitted by this section.

(5) In any case he must be permitted to consult an Advocate within 36 hours from the relevant time, as defined in section 48 (2).

(6) Delay in compliance with a request is only permitted -

(a) in the case of a person who is in detention for a serious arrestable offence; and

(b) if a police officer of at least the rank of chief inspector authorises it.

(7) An officer may give an authorisation under subsection (6)

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orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.

(8) Subject to subsection (9) an officer may only authorise delay where he has reasonable grounds for believing that the exercise of the right conferred by subsection (1) at the time when the person detained desires to exercise it -

- (a) will lead to interference with or harm to evidence connected with a serious arrestable offence or interference with or physical injury to other persons; or
- (b) will lead to the alerting of other persons suspected of having committed such an offence but not yet arrested for it; or
- (c) will hinder the recovery of any property obtained as a result of such an offence.

(9) An officer may also authorise delay where the serious arrestable offence is a drug trafficking offence or a money laundering offence and the officer has reasonable grounds for believing -

- (a) where the offence is a drug trafficking offence, that the detained person has benefited from drug trafficking and that the recovery of the value of that person's proceeds of drug trafficking will be hindered by the exercise of the right conferred by subsection (1); and

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- (b) where the offence is a money laundering offence, that the detained person has benefited from the offence and that the recovery of the value of the property obtained by that person from or in connection with the offence or of the pecuniary advantage derived by him from or in connection with it will be hindered by the exercise of the right conferred by subsection (1).

(10) If delay is authorised the detained person shall be told the reason for it and the reason shall be noted on his custody record.

(11) The duties imposed by subsection (10) shall be performed as soon as is practicable.

(12) There may be no further delay in permitting the exercise of the right conferred by subsection (1) once the reason for authorising delay ceases to subsist.

(13) Nothing in this section applies to a person arrested or detained under the terrorism provisions.

**Fingerprinting**

**67.** (1) Except as provided by this section no person's fingerprints may be taken without the appropriate consent.

(2) Consent to the taking of a person's fingerprints must be in writing if it is given at a time when he is at a designated place of detention.

(3) The fingerprints of a person detained at a designated place of detention may be taken without the appropriate consent -

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- (a) if a police officer of at least the rank of chief inspector authorises them to be taken; or
- (b) if -
  - (i) he has been charged with an arrestable offence or informed that he will be reported for such an offence; and
  - (ii) he has not had his fingerprints taken in the course of the investigation of the offence by the police or customs.

(4) Where a person charged with an arrestable offence or informed that he will be reported for such an offence has already had his fingerprints taken as mentioned in paragraph (b)(ii) of subsection (3), that fact shall be disregarded for the purposes of that subsection if -

- (a) the fingerprints taken on the previous occasion do not constitute a complete set of his fingerprints; or
- (b) some or all of the fingerprints taken on the previous occasion are not of sufficient quality to allow satisfactory analysis, comparison or matching (whether in the case in question or generally).

(5) An officer may only give an authorisation under subsection (3)(a) if he has reasonable grounds -

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- (a) for suspecting the involvement of the person whose fingerprints are to be taken in a criminal offence; and
- (b) for believing that his fingerprints will tend to confirm or disprove his involvement.

(6) The fingerprints of a person who has answered to bail at a court or police station may be taken without the appropriate consent at the court or station if -

- (a) the court, or
- (b) an officer of at least the rank of chief inspector,

authorises them to be taken.

(7) A court or officer may only give an authorisation under subsection (6) if -

- (a) the person who has answered to bail has answered to it for a person whose fingerprints were taken on a previous occasion and there are reasonable grounds for believing that he is not the same person; or
- (b) the person who has answered to bail claims to be a different person from a person whose fingerprints were taken on a previous occasion.

(8) An officer may give an authorisation under subsection (3)(a) or subsection (6) orally or in writing but, if he gives it orally, he shall confirm it in

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writing as soon as is practicable.

(9) Any person's fingerprints may be taken without the appropriate consent if –

- (a) he has been convicted of an arrestable offence; or
- (b) he has been given a formal caution in respect of an arrestable offence which, at the time of the caution, he has admitted.

(10) In a case where by virtue of subsection (3) or (6) a person's fingerprints are taken without the appropriate consent –

- (a) he shall be told the reason before his fingerprints are taken; and
- (b) the reason shall be recorded as soon as is practicable after the fingerprints are taken.

(11) If a person's fingerprints are taken at a designated place of detention, whether with or without the appropriate consent –

- (a) before the fingerprints are taken, an officer shall inform him that they may be the subject of a speculative search; and
- (b) the fact that the person has been informed of this possibility shall be recorded as soon as is practicable after the fingerprints have been taken.

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(12) If he is detained at a police station when the fingerprints are taken, the reason for taking them and, in the case falling within subsection (11), the fact referred to in paragraph (b) of that subsection shall be recorded on his custody record.

(13) Where a person's fingerprints are taken electronically, they must be taken only in such manner, and using such devices, as the Committee for Home Affairs has approved for the purposes of electronic fingerprinting.

(14) The power to take the fingerprints of a person detained at a police station without the appropriate consent shall be exercisable by any police officer.

(15) Nothing in this section –

- (a) affects any power conferred by paragraph 18 (2) of Schedule 2 to the Immigration Act 1971; or
- (b) applies to a person arrested or detained under the terrorism provisions.

**Intimate samples**

**68.** (1) An intimate sample may be taken from a person in police detention only -

- (a) if a police officer of at least the rank of chief inspector authorises it to be taken; and
- (b) if the appropriate consent is given.

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(2) An intimate sample may be taken from a person who is not in police detention but from whom, in the course of the investigation of the offence, two or more non-intimate samples suitable for the same means of analysis have been taken which have proved insufficient -

- (a) if a police officer of at least the rank of chief inspector authorises it to be taken; and
- (b) if the appropriate consent is given.

(3) An officer may only give an authorisation under subsection (1) or (2) above if he has reasonable grounds -

- (a) for suspecting the involvement of the person from whom the sample is to be taken in an arrestable offence; and
- (b) for believing that the sample will tend to confirm or disprove his involvement.

(4) An officer may give an authorisation under subsection (1) or (2) orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.

(5) The appropriate consent must be given in writing.

(6) Where an authorisation has been given and it is proposed that an intimate sample shall be taken in pursuance of the authorisation, an officer shall inform the person from whom the sample is to be taken of the giving of the

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authorisation and the grounds for giving it.

(7) The duty imposed by subsection (6) includes a duty to state the nature of the offence in which it is suspected that the person from whom the sample is to be taken has been involved.

(8) If an intimate sample is taken from a person -

- (a) the authorisation by virtue of which it was taken;
- (b) the grounds for giving the authorisation; and
- (c) the fact that the appropriate consent was given,

shall be recorded as soon as is practicable after the sample is taken.

(9) If an intimate sample is taken from a person at a designated place of detention -

- (a) before the sample is taken, an officer shall inform him that it may be the subject of a speculative search; and
- (b) the fact that the person has been informed of this possibility shall be recorded as soon as practicable after the sample has been taken.

(10) If an intimate sample is taken from a person detained at a designated place of detention, the matters required to be recorded by subsection (8) or (9) shall be recorded in his custody record.

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(11) In the case of an intimate sample which is a dental impression, the sample may be taken from a person only by a recognised dentist.

(12) In the case of any other form of intimate sample, except in the case of a sample of urine, the sample may be taken from a person only by a recognised medical practitioner or a registered nurse.

(13) Where the appropriate consent to the taking of an intimate sample from a person was refused without good cause, in any proceedings against that person for an offence -

- (a) the court, in determining -
  - (i) whether to commit that person for trial; or
  - (ii) whether there is a case to answer; and
- (b) the court, in determining whether that person is guilty of the offence charged,

may draw such inferences from the refusal as appear proper.

(14) Nothing in this section affects sections 1 to 10 of the Road Traffic (Drink Driving) (Guernsey) Law, 1989.

(15) Nothing in this section applies to a person arrested or detained under the terrorism provisions; and subsection (2) shall not apply where the non-intimate samples mentioned in that subsection were taken under paragraph 10 of Schedule 9 to the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002.

**Other samples**

69. (1) Except as provided by this section, a non-intimate sample may not be taken from a person without the appropriate consent.

(2) The appropriate consent to the taking of a non-intimate sample must be given in writing.

(3) A non-intimate sample may be taken from a person without the appropriate consent if -

- (a) he is in detention or is being held in custody by the police or customs on the authority of a court; and
- (b) an officer of at least the rank of chief inspector authorises it to be taken without the appropriate consent.

(4) A non-intimate sample may be taken from a person (whether or not he falls within subsection (3)(a)) without the appropriate consent if -

- (a) he has been charged with an arrestable offence or informed that he will be reported for such an offence; and
- (b) either he has not had a non-intimate sample taken from him in the course of the investigation of the offence by the police or he has had a non-intimate sample taken from him but either it was not suitable for the same means of analysis or, though so suitable, the sample proved insufficient.

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(5) A non-intimate sample may be taken from a person without the appropriate consent if –

- (a) he has been convicted of an arrestable offence; or
- (b) he is a person to whom either section 1 or section 2 of the Criminal Justice (Special Verdicts) (Guernsey) Law, 1961<sup>m</sup> applies.

(6) An officer may only give an authorisation under subsection (3) if he has reasonable grounds -

- (a) for suspecting the involvement of the person from whom the sample is to be taken in an arrestable offence; and
- (b) for believing that the sample will tend to confirm or disprove his involvement.

(7) An officer may give an authorisation under subsection (3) orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.

(8) An officer shall not give an authorisation under subsection (3) for the taking from any person of a non-intimate sample consisting of a skin impression if -

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<sup>m</sup> Ordres en Conseil Vol. XVIII, p355

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- (a) a skin impression of the same part of the body has already been taken from that person in the course of the investigation of the offence; and
- (b) the impression previously taken is not one that has proved insufficient.

(9) Where an authorisation has been given and it is proposed that a non-intimate sample shall be taken in pursuance of the authorisation, an officer shall inform the person from whom the sample is to be taken of the giving of the authorisation and of the grounds for giving it.

(10) The duty imposed by subsection (9) includes a duty to state the nature of the offence in which it is suspected that the person from whom the sample is to be taken has been involved.

(11) If a non-intimate sample is taken from a person by virtue of subsection (3) -

- (a) the authorisation by virtue of which it was taken; and
- (b) the grounds for giving the authorisation,

shall be recorded as soon as is practicable after the sample is taken.

(12) In a case where by virtue of subsection (4) or (5) a sample is taken from a person without the appropriate consent -

- (a) he shall be told the reason before the sample is taken;

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and

- (b) the reason shall be recorded as soon as practicable after the sample is taken.

(13) If a non-intimate sample is taken from a person at a designated place of detention whether with or without the appropriate consent -

- (a) before the sample is taken, an officer shall inform him that it may be the subject of a speculative search; and
- (b) the fact that the person has been informed of this possibility shall be recorded as soon as practicable after the sample has been taken.

(14) If a non-intimate sample is taken from a person detained at a designated place of detention, the matters required to be recorded by subsection (11), (12) or (13) shall be recorded in his custody record.

(15) Where a non-intimate sample consisting of a skin impression is taken electronically from a person, it must be taken only in such manner, and using such devices, as the Committee for Home Affairs has approved for the purpose of the electronic taking of such an impression.

(16) Subsection (5) shall not apply to persons convicted before the date on which that subsection comes into force.

(17) The power to take a non-intimate sample from a person without the appropriate consent shall be exercisable by any police officer.

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(18) Nothing in this section applies to a person arrested or detained under the terrorism provisions.

**Fingerprints and samples : supplementary provisions**

**70.** (1) Fingerprints or samples or the information derived from samples taken under any power conferred by this Part from a person who has been arrested on suspicion of being involved in a arrestable offence or has been charged with such an offence or has been informed that he will be reported for such an offence may be checked against other fingerprints or samples or the information derived from other samples which are –

- (a) held in connection with or as a result of an investigation of an offence;
- (b) contained in records held by the Island Police Force;  
or
- (c) contained in any similar records held by or on behalf of any relevant law enforcement agency.

(2) In subsection (1) “ **relevant law enforcement agency** “ means -

- (a) any police force elsewhere in the British Islands;
- (b) any police force of a country or territory outside the British Islands;
- (c) any person or public authority in the British Islands having functions which consist of or include the

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provision of criminal intelligence, the prevention and detection of serious crime, the investigation of crimes and the charging of offences;

(d) any person or public authority of a country or territory outside the British Islands whose functions correspond to those of a police force or which otherwise consist of or include the investigation of conduct contrary to the law of that country or territory, or the apprehension of persons guilty of such conduct;

(e) any person with functions under any international agreement which consist of or include –

(i) the investigation of conduct which is unlawful under the law of one or more places, prohibited by such an agreement or contrary to international law, or

(ii) the apprehension of persons guilty of such conduct; and

(f) any police force or authority, body or person with similar functions (but not falling within paragraphs (a) to (e)) which the Committee for Home Affairs may by regulation specify.

(3) Where -

(a) fingerprints or samples have been taken from any

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person in connection with the investigation of an offence but otherwise than in circumstances to which subsection (1) applies, and

- (b) that person has given his consent in writing to the use in a speculative search of the fingerprints or of the samples and of information derived from them,

the fingerprints or, as the case may be, those samples and that information may be checked against any of the fingerprints, samples or information mentioned in paragraphs (a) to (c) of that subsection.

(4) A consent given for the purposes of subsection (3) cannot be withdrawn.

(5) Where a sample of hair other than pubic hair is to be taken the sample may be taken either by cutting hairs or by plucking hairs with their roots so long as no more are plucked than the person taking the sample reasonably considers to be necessary for a sufficient sample.

(6) Where any power to take a sample is exercisable in relation to a person the sample may be taken in the Prison.

(7) Any police officer may, within the allowed period, require a person who is neither in police detention nor held in custody on the authority of a court to attend a designated place of detention in order to have a sample taken where -

- (a) the person has been charged with an arrestable offence or informed that he will be reported for such an

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offence and either –

(i) he has not had a sample taken from him in the course of the investigation of the offence by the police; or

(ii) he has had a sample so taken from him but either it was not suitable for the same means of analysis or, though so suitable, the sample proved insufficient; or

(b) the person has been convicted of an arrestable offence and either –

(i) he has not had a sample taken from him since the conviction; or

(ii) he has had a sample taken from him (before or after his conviction) but either it was not suitable for the same means of analysis or, though so suitable, the sample proved insufficient.

(8) The period allowed for requiring a person to attend a designated place of detention for the purpose specified in subsection (7) is -

(a) in the case of a person falling within paragraph (a), one month beginning with the date of the charge or one month beginning with the date on which the appropriate officer is informed of the fact that the

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sample is not suitable for the same means of analysis or has proved insufficient, as the case may be;

- (b) in the case of a person falling within paragraph (b), one month beginning with the date of the conviction or one month beginning with the date on which the appropriate officer is informed of the fact that the sample is not suitable for the same means of analysis or has proved insufficient, as the case may be.

(9) A requirement under subsection (7) -

- (a) shall give the person at least 7 days within which he must so attend; and
- (b) may direct him to attend at a specified time of day or between specified times of day.

(10) Any police officer may arrest without a warrant a person who has failed to comply with a requirement under subsection (7).

(11) In this section “the appropriate officer” is the officer investigating the offence with which that person has been charged or convicted, or the offence as to which he was informed that he would be reported.

**Testing for the presence of Class A and Class B drugs**

71. (1) A sample of urine or a non-intimate sample may be taken from a person over the age of 18 years in police detention for the purpose of ascertaining whether he has any specified Class A or Class B drug in his body if he has been asked by a police officer to give a sample and the conditions in subsection

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(2) are met.

- (2) A sample may be taken under this subsection if –
- (a) the person concerned has been charged with or arrested for a trigger offence; or
  - (b) the person concerned has been charged with any offence and a police officer of at least the rank of chief inspector, who has reasonable grounds for suspecting that the misuse by that person of any specified Class A or Class B drug caused or contributed to the offence, has authorised the sample to be taken.

(3) Before asking the person to give a sample, a police officer must –

- (a) warn him that if, when so asked, he fails without good cause to give the sample, he may be liable to prosecution; and
- (b) in a case falling within paragraph (b) of subsection (2), inform him that the authorisation has been given and of the grounds for it.

(4) Except in the case of a sample of urine, a sample may be taken from a person under this section only by a suitably qualified person.

(5) Information obtained from a sample taken under this section may be disclosed –

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- (a) for the purpose of informing any decision about granting bail in criminal proceedings to the person concerned;
- (b) where the person concerned is in police detention or remanded in custody by order of a court, or has been granted such bail, for the purpose of informing any decision about his supervision;
- (c) where the person concerned is convicted of an offence, for the purpose of informing any decision about the appropriate sentence to be passed by a court and any decision about his supervision or release;
- (d) for the purpose of ensuring that appropriate advice and treatment is made available to the person concerned.

(6) An officer may give an authorisation under subsection (2) (b) orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as practicable.

(7) If a sample is taken pursuant to an authorisation under subsection (2) (b), the authorisation and the grounds for the suspicion shall be recorded as soon as practicable after the sample is taken.

(8) If the sample is taken from a person in police detention, the matters required to be recorded by subsection (7) shall be recorded in his custody record.

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(9) Nothing in this section shall affect sections 1 to 10 of the Road Traffic (Drink Driving) (Guernsey) Law, 1989.

(10) A person who fails without good cause to give any sample which may be taken from him under this section shall be guilty of an offence and liable to imprisonment for a term not exceeding 3 months, or a fine not exceeding level 4 on the uniform scale, or both.

**Retention, use and destruction of fingerprints and samples**

72. (1) If fingerprints or samples are taken from a person in connection with the investigation of an offence and that person is not suspected of having committed the offence, they shall, except as provided in this section, be destroyed as soon as they have fulfilled the purpose for which they were taken.

(2) Where -

(a) fingerprints or samples are taken from a person in connection with the investigation of an offence; and

(b) subsection (1) does not require them to be destroyed,

the fingerprints or samples may be retained after they have fulfilled the purposes for which they were taken but shall not be used by any person except for purposes related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution.

(3) In subsection (1) -

(a) the reference to using a fingerprint includes a reference to allowing any check to be made against it

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under subsection (1) or (3) of section 70 and to disclosing it to any person;

(b) the reference to using a sample includes a reference to allowing any check to be made under subsection (1) or (3) of section 70 against it or against information derived from it and to disclosing it or any such information to any person;

(c) the reference to a crime includes a reference to any conduct which –

(i) constitutes one or more criminal offences under the law of the Bailiwick or of any country or territory outside the Bailiwick; or

(ii) is, or corresponds to, any conduct which, if it all took place in the Bailiwick, would constitute one or more criminal offences; and

(d) the references to an investigation and to a prosecution include references, respectively, to any investigation outside the Bailiwick of any crime or suspected crime and to a prosecution brought in respect of any crime in a country or territory outside the Bailiwick.

(4) Samples and fingerprints are not required to be destroyed under subsection (1) if –

(a) they were taken for the purpose of the investigation of

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an offence of which a person has been convicted; and

- (b) the sample or fingerprint (as the case may be) was also taken from the convicted person for the purposes of that investigation.

(5) Subject to subsection (6), where a person is entitled under subsection (1) to the destruction of any fingerprint or sample taken from him (or would be but for subsection (4)), neither the fingerprint nor the sample, nor any information derived from the sample shall be used –

- (a) in evidence against the person who is or would be entitled to the destruction of that fingerprint or sample;  
or
- (b) for the purposes of the investigation of any offence.

(6) Where a person from whom a fingerprint or sample has been taken consents in writing to its retention –

- (a) that fingerprint or sample need not be destroyed under subsection (1);
- (b) subsection (5) shall not restrict the use that may be made of the fingerprint or sample or, in the case of a sample, of any information derived from it; and
- (c) that consent shall be treated as comprising a consent for the purposes of section 70 (3) ;

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and a consent given for the purposes of this subsection cannot be withdrawn.

(7) For the purposes of subsection (6) it shall be immaterial whether the consent is given at, before or after the time when the entitlement to the destruction of the fingerprint or sample arises.

(8) If fingerprints are destroyed -

(a) any copies of the fingerprints shall also be destroyed;  
and

(b) any police officer controlling access to computer data relating to the fingerprints shall make access to the data impossible, as soon as it is practicable to do so.

(9) A person who asks to be allowed to witness the destruction of his fingerprints or copies of them shall have a right to witness it.

(10) If subsection (8)(b) falls to be complied with and the person to whose fingerprints the data relates asks for a certificate that it has been complied with, that certificate shall be issued to him, not later than the end of the period of 3 months beginning with the day on which he asks for it, by either of the Chief Officers or a person authorised by either of them for the purposes of this section.

(11) Nothing in this section -

(a) affects any power conferred by paragraph 18 (2) of Schedule 2 to the Immigration Act 1971; or

(b) applies to a person arrested or detained under the

terrorism provisions.

## PART VI

### CODES OF PRACTICE - GENERAL

#### Codes of practice

73. (1) The Committee shall issue codes of practice –

- (a) in connection with -
  - (i) the exercise by police officers of statutory powers to search a person without first arresting him or to search a vehicle without making an arrest;
  - (ii) the detention, treatment, questioning and identification of persons by police officers;
  - (iii) searches of premises by police officers;
  - (iv) the seizure of property found by police officers on persons or premises; and
  - (v) the exercise by police officers of powers under section 71;
- (b) requiring the recording, by any electronic means, of interviews of persons suspected of the commission of

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criminal offences, or of specified descriptions of criminal offences, which are held at designated places of detention or at specified designated places of detention.

- (2) In this Part, “the Committee” means –
- (i) in relation to police officers, the Committee for Home Affairs;
  - (ii) in relation to customs officers, the Board of Administration.

**Codes of practice - supplementary**

74. (1) This section applies to a code of practice issued under section 73.

(2) When the Committee proposes to issue a code of practice to which this section applies, it shall prepare and publish a draft of that code, shall consider any representations made to it about the draft and may modify the draft accordingly.

(3) After the Committee has complied with subsection (2), it may bring the code of practice into operation by order.

(4) An order made under this section shall be laid before the States as soon as may be after being made and if at that meeting or the next subsequent meeting the States resolve that the order be annulled, the order shall cease to have effect but without prejudice to anything done under the order or to the making of a new order.

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(5) An order bringing a code of practice into operation may contain such transitional provisions or savings as appear to be necessary or expedient in connection with the code of practice thereby brought into operation.

(6) The Committee may from time to time revise the whole or any part of a code of practice to which this section applies and issue that revised code; and the foregoing provisions of this section shall apply (with appropriate modifications) to such a revised code as they apply to the first issue of a code.

(7) The Chief Pleas of Sark may by resolution provide that a code of practice issued by the Committee is to be treated as having effect in the Island of Sark with such modifications as may be specified in the resolution; but subject to this provision and to anything contained in it, such a code shall have effect throughout the Bailiwick.

(8) Persons other than police officers who are charged with the duty of investigating offences or charging offenders shall in the discharge of that duty have regard to any relevant provision of such a code.

(9) A failure on the part -

(a) of a police officer to comply with any provision of such a code; or

(b) of any person other than a police officer who is charged with the duty of investigating offences or charging offenders to have regard to any relevant provision of such a code in the discharge of that duty,

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shall not of itself render him liable to any criminal or civil proceedings.

(10) In all criminal and civil proceedings any such code shall be admissible in evidence; and if any provision of such a code appears to the court or tribunal conducting the proceedings to be relevant to any question arising in the proceedings it shall be taken into account in determining that question.

(11) In this section, references to criminal proceedings includes -

- (a) proceedings in the Bailiwick or elsewhere before a court martial constituted under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957;
- (b) proceedings before the Courts-Martial Appeal Court; and
- (c) proceedings before a Standing Civilian Court established by the Armed Forces Act 1976.

**PART VII**

**EVIDENCE IN CRIMINAL PROCEEDINGS**

*General*

**Time for taking accused's evidence**

**75.** If at the trial of any person for an offence -

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- (a) the defence intends to call two or more witnesses to the facts of the case; and
- (b) those witnesses include the accused,

the accused shall be called before the other witness or witnesses unless the court in its discretion otherwise directs.

*Admission of Evidence – Confessions and generally*

**Confessions**

**76.** (1) In any proceedings a confession made by an accused person may be given in evidence against him in so far as it is relevant to any matter in issue in the proceedings and is not excluded by the court in pursuance of this section.

(2) If, in any proceedings where the prosecution proposes to give in evidence a confession made by an accused person, it is represented to the court that the confession was or may have been obtained -

- (a) by oppression of the person who made it; or
- (b) in consequence of anything said or done which was likely, in the circumstances existing at the time, to render unreliable any confession which might be made by him in consequence thereof,

the court shall not allow the confession to be given in evidence against him except in so far as the prosecution proves to the court beyond reasonable doubt that the confession (notwithstanding that it may be true) was not obtained as aforesaid.

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(3) In any proceedings where the prosecution proposes to give in evidence a confession made by an accused person, the court may of its own motion require the prosecution, as a condition of allowing it to do so, to prove that the confession was not obtained as mentioned in subsection (2).

(4) The fact that a confession is wholly or partly excluded in pursuance of this section shall not affect the admissibility in evidence -

(a) of any facts discovered as a result of the confession; or

(b) where the confession is relevant as showing that the accused speaks, writes or expresses himself in a particular way, of so much of the confession as is necessary to show that he does so.

(5) Evidence that a fact to which this subsection applies was discovered as a result of a statement made by an accused person shall not be admissible unless evidence of how it was discovered is given by him or on his behalf.

(6) Subsection (5) applies -

(a) to any fact discovered as a result of a confession which is wholly excluded in pursuance of this section; and

(b) to any fact discovered as a result of a confession which is partly so excluded, if the fact is discovered as a result of the excluded part of the confession.

(7) Nothing in Part I of the Criminal Evidence and Miscellaneous

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Provisions (Bailiwick of Guernsey) Law, 2002<sup>n</sup> shall prejudice the admissibility of a confession made by an accused person.

(8) In this section “oppression” includes torture, inhuman or degrading treatment, and the use or threat of violence (whether or not amounting to torture).

(9) Where the proceedings mentioned in subsection (1) are proceedings before any court in the Bailiwick making an inquiry as to whether a person should be committed to stand trial before the Royal Court in a criminal matter, this section shall have effect with the omission of -

- (a) in subsection (1) the words “and is not excluded by the court in pursuance of this section”; and
- (b) subsections (2) to (6) and (8).

**Confessions by mentally handicapped persons**

77. (1) Without prejudice to the general duty of the Bailiff at a trial on indictment to direct the Jurats on any matter on which it appears to the court appropriate to do so, where at such a trial -

- (a) the case against the accused depends wholly or substantially on a confession by him; and
- (b) the court is satisfied -

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<sup>n</sup> Order in Council No.\*\* of 2002

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- (i) that he is mentally handicapped; and
- (ii) that the confession was not made in the presence of an independent person,

the Bailiff shall warn the Jurats that there is special need for caution before convicting the accused in reliance on the confession, and shall explain that the need arises because of the circumstances mentioned in paragraphs (a) and (b).

(2) Where it appears to the court that the circumstances set out in paragraphs (a) and (b) of subsection (1) are met in relation to the summary trial of a person in the Ordinary Court or to the summary trial of a person in the Court of Alderney, the Bailiff or the Chairman of the Court of Alderney (as the case may be) shall warn the Jurats accordingly.

(3) In any case where at the summary trial of a person for an offence it appears to the court that a warning under subsection (1) would be required if the trial were on indictment, the court shall treat the case as one in which there is a special need for caution before convicting the accused on his confession.

(4) In this section -

**“independent person”** does not include a police officer or a person employed for, or engaged on, police purposes;

**“mentally handicapped”** in relation to a person means that he is in a state of arrested or incomplete development of mind which includes significant impairment of intelligence and social functioning; and

“**police purposes**” includes the purposes of -

- (a) police cadets undergoing training with a view to becoming police officers, and
- (b) civilians employed by the Island Police.

**Exclusion of unfair evidence**

78. (1) In any proceedings the court may refuse to allow evidence on which the prosecution proposes to rely to be given if it appears to the court that, having regard to all the circumstances, including the circumstances in which the evidence was obtained, the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it.

(2) Nothing in this section shall prejudice any rule of law requiring a court to exclude evidence.

(3) This section shall not apply in the case of proceedings before any court in the Bailiwick making an inquiry as to whether a person should be committed to stand trial before the Royal Court in criminal matters.

*Convictions and acquittals*

**Proof of convictions and acquittals**

79. (1) Where in any proceedings the fact that a person has in the British Islands been convicted or acquitted of an offence otherwise than by a Service court is admissible in evidence, it may be proved by producing a certificate of conviction or, as the case may be, of acquittal relating to that offence, and proving that the person named in the certificate as having been convicted or acquitted of the offence is the person whose conviction or acquittal of the offence is to be proved.

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(2) For the purposes of this section a certificate of conviction or of acquittal -

(a) shall, as regards a conviction or acquittal on indictment, consist of a certificate, signed by the proper officer of the court where the conviction or acquittal took place, giving the substance and effect (omitting the formal parts) of the indictment and of the conviction or acquittal; and

(b) shall, as regards a conviction or acquittal on a summary trial, consist of a copy of the conviction or if the dismissal of the information, signed by the proper officer of the court where the conviction or acquittal took place or by the proper officer of the court, if any, to which a memorandum of the conviction or acquittal was sent;

and a document purporting to be a duly signed certificate of conviction or acquittal under this section shall be taken to be such a certificate unless the contrary is proved.

(3) In this section the “**proper officer of the court**” means –

(a) in relation to the Magistrate’s Court or the Royal Court, Her Majesty’s Greffier or any of his deputies;

(b) in relation to the Court of Alderney, the Clerk of the Court;

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- (c) in relation to the Court of the Seneschal of Sark, the Greffier of Sark (Clerk of the Court) or his deputy;
- (d) in relation to any other court, the clerk of the court, his deputy or any other person having the custody of the court record.

(4) The method of proving a conviction or acquittal authorised by this section shall be in addition to and not to the exclusion of any other authorised manner of proving a conviction or acquittal.

**Conviction as evidence of commission of offence**

80. (1) In any proceedings the fact that a person other than the accused has been convicted of an offence by or before any court in the British Islands shall be admissible in evidence for the purpose of proving, where to do so is relevant to any issue in those proceedings, that that person committed that offence, whether or not any other evidence of his having committed that offence is given.

(2) In any proceedings in which by virtue of this section a person other than the accused is proved to have been convicted of an offence by or before any court in the British Islands he shall be taken to have committed that offence unless the contrary is proved.

(3) In any proceedings where evidence is admissible of the fact that the accused has committed an offence, in so far as that evidence is relevant to any matter in issue in the proceedings for a reason other than a tendency to show in the accused a disposition to commit the kind of offence with which he is charged, if the accused is proved to have been convicted of the offence by or before any court in the British Islands he shall be taken to have committed that offence unless the

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contrary is proved.

- (4) Nothing in this section shall prejudice -
  - (a) the admissibility in evidence of any conviction which would be admissible apart from this section; or
  - (b) the operation of any enactment whereby a conviction or a finding of fact in any proceedings is for the purposes of any other proceedings made conclusive evidence of any fact.

**Provisions supplementary to section 80**

**81.** (1) Where evidence that a person has been convicted of an offence is admissible by virtue of section 80, then without prejudice to the reception of any other admissible evidence for the purpose of identifying the facts on which the conviction was based -

- (a) the contents of any document which is admissible as evidence of the conviction; and
- (b) the contents of the information, complaint, indictment or charge-sheet on which the person in question was convicted,

shall be admissible in evidence for that purpose.

(2) Where in any proceedings the contents of any document are admissible in evidence by virtue of subsection (1), a copy of that document, or of the material part of it, purporting to be certified or otherwise authenticated by or on

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behalf of the court or authority having custody of that document shall be admissible in evidence and shall be taken to be a true copy of that document or part unless the contrary is shown.

(3) Nothing in section 80 shall be construed as rendering admissible in any proceedings evidence of any conviction other than a subsisting one.

*Miscellaneous*

**Competence and compellability of accused's spouse**

**82.** (1) In any proceedings the wife or husband of a person charged in the proceedings shall, subject to subsection (4), be compellable to give evidence on behalf of that person.

(2) In any proceedings the wife or husband of a person charged in the proceedings shall, subject to subsection (4), be compellable -

- (a) to give evidence on behalf of any other person charged in the proceedings but only in respect of any specified offence with which that other person is charged; or
- (b) to give evidence for the prosecution but only in respect of any specified offence with which any person is charged in the proceedings.

(3) In relation to the wife or husband of a person charged in any proceedings, an offence is a specified offence for the purposes of subsection (2) if -

- (a) it involves an assault on, or injury or a threat of injury

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to, the wife or husband or a person who was at the material time under the age of 16;

- (b) it is a sexual offence alleged to have been committed in respect of a person who was at the material time under that age; or
- (c) it consists of attempting or conspiring to commit, or of aiding, abetting, counselling, procuring or inciting the commission of, an offence falling within paragraph (a) or (b).

(4) No person who is charged in any proceedings shall be compellable by virtue of subsection (2) to give evidence in the proceedings.

(5) References in this section to a person charged in any proceedings do not include a person who is not, or is no longer, liable to be convicted of any offence in the proceedings (whether as a result of pleading guilty or for any other reason).

(6) In any proceedings a person who has been but is no longer married to the accused shall be compellable to give evidence as if that person and the accused had never been married.

(7) Where in any proceedings the age of any person at any time is material for the purposes of subsection (3), his age at the material time shall for the purposes of that provision be deemed to be or to have been that which appears to the court to be or to have been his age at that time.

(8) In subsection (3)(b) “sexual offence” means an offence under

the Loi relative à la protection des femmes et des filles mineures, 1914<sup>o</sup>, the Loi relative à la sodomie, 1929<sup>p</sup>, the Sexual Offences (Bailiwick of Guernsey) Law, 1983<sup>q</sup> or the Protection of Children (Bailiwick of Guernsey) Law, 1985<sup>r</sup>.

**Rule where accused's spouse not compellable**

83. The failure of the wife or husband of a person charged in any proceedings to give evidence in the proceedings shall not be made the subject of any comment by the prosecution.

**Power to restrict reports of proceedings**

84. (1) In relation to any proceedings in any court in the Bailiwick, the court may, where it appears to be necessary for avoiding a substantial risk of prejudice to the administration of justice in those proceedings, or in any other proceedings pending or imminent, direct that -

- (a) the publication of any report of the proceedings or of any part of the proceedings shall be postponed for such period as the court considers necessary for that purpose;
- (b) the publication of any matter or information in relation to the proceedings shall be prohibited or restricted in

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<sup>o</sup> Ordres en Conseil Vol. V, p74.

<sup>p</sup> Ordres en Conseil Vol. VIII, p273.

<sup>q</sup> Ordres en Conseil Vol. XXVIII, p316.

<sup>r</sup> Ordres en Conseil Vol. XXIX, p103.

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such manner as the court considers necessary for that purpose.

(2) A direction under subsection (1) may be made or revoked at any time by the court.

(3) Rules of Court may specify matters or information of any description which may be contained in or which shall be excluded from a report of proceedings, in relation to such cases, offences, circumstances or proceedings as may be specified.

(4) A person who publishes a report of the proceedings in contravention of a direction made under subsection (1) shall be guilty of an offence and shall be liable -

- (a) upon summary conviction, to imprisonment for a term not exceeding 3 months or to a fine not exceeding level 5 on the uniform scale or to both; or
- (b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine or to both.

**Power to make Ordinances on evidence etc.**

85. (1) In relation to any proceedings in any court in the Bailiwick, the States may by Ordinance make such provision as seems to them to be appropriate in relation to the receipt of evidence and the disclosure of material in those proceedings.

(2) Without prejudice to the generality of subsection (1), an Ordinance under this section may make provision in respect of -

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- (a) the matters which are to constitute evidence and the extent to which evidence is admissible;
- (b) the manner and the way in which evidence is adduced;
- (c) the requirements that shall be satisfied before evidence may be adduced;
- (d) the circumstances in which evidence shall or may be excluded;
- (e) the means by which matters may be proved;
- (f) the procedural requirements and safeguards relating to the receipt of evidence;
- (g) the disclosure of material by the prosecution or the accused;

and may make such provision in relation to such cases, offences, circumstances or proceedings as may be specified in the Ordinance.

(3) An Ordinance made under this section may make such ancillary and incidental provision as appears to the States necessary or desirable, including the amendment, modification, extension or repeal, in whole or in part, of any enactment coming into force before this Law and of any rule of customary or common law.

**Part VII - interpretation**

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86. (1) In this Part of this Law -

**“proceedings”** means criminal proceedings and includes -

- (a) proceedings before any of the courts exercising a criminal jurisdiction in the Bailiwick;
- (b) proceedings in the Bailiwick or elsewhere before a court martial constituted under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957;
- (c) proceedings before the Courts-Martial Appeal Court; and
- (d) proceedings before a Standing Civilian Court established by the Armed Forces Act 1976;

**“publish”** in relation to a report includes publication by itself or in a newspaper or periodical, by radio broadcast or television, or by any electronic means for dissemination to the public or to a section of the public;

**“Service court”** means a court martial or a Standing Civilian Court.

(2) In this Part of this Law references to a conviction before a Service Court are references to a finding of guilty which is, or which falls to be treated as, the finding of the court; and “convicted” shall be construed accordingly.

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(3) Nothing in this Part of this Law shall prejudice any power of a court to exclude evidence (whether by preventing questions from being put or otherwise) at its discretion.

**PART VIII**

**MISCELLANEOUS AND SUPPLEMENTARY**

**Power of police officers to use reasonable force**

87. Where any provision of this Law -

- (a) confers a power on a police officer; and
- (b) does not provide that the power may only be exercised with the consent of some person, other than a police officer,

the officer may use reasonable force, if necessary, in the exercise of the power.

**Police officers performing duties of higher rank**

88. (1) For the purpose of any provision of this Law or any other enactment under which a power in respect of the investigation of offences or the treatment of persons in police custody is exercisable only by or with the authority of a police officer of at least the rank of chief inspector, an officer of the rank of inspector shall be treated as holding the rank of chief inspector if -

- (a) he has been authorised by an officer holding a rank above the rank of chief inspector to exercise the power

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or, as the case may be, to give his authority for its exercise; or

- (b) he is acting during the absence of an officer holding the rank of chief inspector who has authorised him, for the duration of that absence, to exercise the power or, as the case may be, to give his authority for its exercise.

(2) For the purpose of any provision of this Law or any other enactment under which such a power is exercisable only by or with the authority of an officer of at least the rank of inspector, an officer of the rank of sergeant shall be treated as holding the rank of inspector if he has been authorised by an officer of at least the rank of chief inspector to exercise the power, or as the case may be, to give his authority for its exercise.

**Application of Law to Customs and Excise**

**89.** (1) Schedule 5 shall have effect in relation to the application of this Law to Customs officers.

(2) A person is in customs detention for the purposes of this Law if-

- (a) he has been taken to a customs office after being arrested for an offence; or
- (b) he is arrested at a customs office after attending voluntarily at the office or accompanying an officer to it,

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and is detained there or is detained elsewhere in the charge of a customs officer, and nothing shall prevent a detained person from being transferred between customs detention and police detention.

(3) Where under this Law a police officer is given power to seize and retain any thing found upon a lawful search of a person or premises, a customs officer shall have the same power notwithstanding that the thing found is not evidence of an offence in relation to an assigned matter.

(4) Nothing in the application of this Law to customs officers shall be construed to prevent any thing lawfully seized by a person under any enactment from being accepted and retained by a customs officer.

(5) Nothing in this Law shall be taken to limit any powers exercisable under section 71 or 72 of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972 (“the 1972 Law”).

(6) In this section –

“**assigned matter**” has the meaning given to it by section 1 of the 1972 Law;

“**customs officers**” means officers authorised under section 3 of the 1972 Law.

**Meaning of “serious arrestable offence”**

**90.** (1) This section has effect for determining whether an offence is a serious arrestable offence for the purposes of this Law.

(2) The following arrestable offences are always serious -

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- (a) an offence (whether at common law or under any enactment) specified in Part I of Schedule 4 to the Law;
- (b) an offence under an enactment specified in Part II of that Schedule, and
- (c) any of the offences mentioned in paragraphs (a) to (f) of section 1(3) of the Drug Trafficking (Bailiwick of Guernsey) Law, 2000<sup>s</sup>.

(3) Subject to subsection (4), any other arrestable offence is serious only if its commission -

- (a) has led to any of the consequences specified in subsection (5); or
- (b) is intended or is likely to lead to any of those consequences.

(4) An arrestable offence which consists of making a threat is serious if carrying out the threat would be likely to lead to any of the consequences specified in subsection (5).

(5) The consequences mentioned in subsections (3) and (4) are

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<sup>s</sup> Order in Council No. VII of 2000.

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- (a) serious harm to the security of the Bailiwick or to public order;
- (b) serious interference with the administration of justice or with the investigation of offences or of a particular offence;
- (c) the death of any person;
- (d) serious injury to any person;
- (e) substantial financial gain to any person; and
- (f) serious financial loss to any person.

(6) Loss is serious for the purposes of this section if, having regard to all the circumstances, it is serious for the person who suffers it.

(7) In this section “injury” includes any disease and any impairment of a person's physical or mental condition.

**General interpretation**

**91.** (1) The provisions of the Interpretation (Guernsey) Law, 1948<sup>t</sup> shall apply to the interpretation of this Law throughout the Bailiwick.

(2) Any reference in this Law to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification),

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<sup>t</sup> Ordres en Conseil Vol. XIII, p. 355.

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extended or applied.

(3) In this Law, unless the context otherwise requires -

**“Advocate”** means Advocate of the Royal Court of Guernsey;

**“analysis”**, in relation to skin impressions, includes comparison and matching;

**“appropriate consent”** means -

- (a) in relation to a person who has attained the age of 17 years, the consent of that person;
- (b) in relation to a person who has not attained that age but has attained the age of 14 years, the consent of that person and his parent or guardian; and
- (c) in relation to a person who has not attained the age of 14 years, the consent of his parent or guardian;

**“appropriate judicial officer”** means -

- (a) in Alderney, the Chairman of the Court of Alderney or, if he is absent or unable to act, a Jurat of the Court of Alderney authorised by him to act in that capacity on his behalf;

(b) in Sark, the Seneschal of Sark or, if he is absent or unable to act, his deputy;

**“arrestable offence”** has the meaning assigned to it by section 28;

**“British Islands”** has the meaning given by section 8(1) of the Interpretation (Guernsey) Law, 1948<sup>u</sup>

**“caravan”** means any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted;

**“Chief Officers”** means the Chief Officer of the Island Police Force and the Chief Officer of Customs and Excise;

**“child or young person”** has the same meaning as in the Children and Young Persons (Guernsey) Law, 1967;

**“Class A drug”** and **“Class B drug”** have the meanings assigned to them by section 1(1)(b) of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974;

**“confessions”** includes any statement wholly or partly

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<sup>u</sup> Ordres en Conseil Vol. XIII, p355

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adverse to the person who made it, whether made to a person in authority or not and whether made in words or otherwise;

**“Customs and Excise”** means the Chief Officer of Customs and Excise for the time being appointed by the States Civil Service Board and includes any officer of Customs and Excise acting by or under his authority;

**“customs office”** means any premises under the control of the Chief Officer of Customs and Excise;

**“dangerous instruments”** means instruments which have a blade or are sharply pointed;

**“designated place of detention”** has the meaning assigned to it by section 38;

**“document”** means anything in which information of any description is recorded;

**“drug trafficking”** and **“drug trafficking offence”** have the same meaning as in section 1 of the Drug Trafficking (Bailiwick of Guernsey) Law, 2000;

**“fingerprints”** in relation to any person, means a record (in any form and produced by any method) of the skin pattern and other physical characteristics or features of -

- (a) any of that person's fingers; or

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- (b) either of his palms.

**“intimate sample”** means -

- (a) a sample of blood, semen or any other tissue fluid, urine or pubic hair;
- (b) a dental impression;
- (c) a swab taken from a person's body orifice other than the mouth;

**“intimate search”** means a search which consists of the physical examination of a person's body orifices other than the mouth;

**“Island Police Force”** means the salaried police force of the Island of Guernsey;

**“item subject to legal professional privilege”** has the meaning assigned to it by section 24;

**“journalistic material”** has the meaning assigned to it by section 27;

**“money laundering offence”** means an offence under Part II of the Criminal Justice (Proceeds of Crime) (Bailiwick of

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Guernsey) Law, 1999<sup>v</sup> (offences in respect of which confiscation orders under that Law may be made);

**“non-intimate sample”** means -

- (a) a sample of hair other than pubic hair;
- (b) a sample taken from a nail or from under a nail;
- (c) a swab taken from any part of a person's body including the mouth but not any other body orifice;
- (d) saliva;
- (e) a skin impression;

**“offensive weapon”** means any article made or adapted for use for causing injury to persons, or intended by the person having it with him for such use by him or by some other person;

**“parent or guardian”** means the States Children Board in the case of a child or young person in its care;

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<sup>v</sup> Order in Council No. XXII of 1999.

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**“personal records”** has the meaning assigned to it by section 26;

**“police detention”** has the meaning given to it by section 59(4);

**“police officer”** means –

- (a) in relation to Guernsey, Herm and Jethou, a member of the Island Police Force and, within the limits of his jurisdiction, a member of the special constabulary of the Island of Guernsey;
- (b) in relation to Alderney, a member of the Island Police Force, a member of any police force which may be established by the States of Alderney, and within the limits of his jurisdiction, a special constable appointed pursuant to section 46A of the Government of Alderney Law, 1987<sup>w</sup>;
- (c) in relation to Sark, the Constable, the Assistant Constable, the Vingtenier, a member of the Island Police Force, and within the limits of his jurisdiction, a special constable appointed by the Court of the Seneschal;

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<sup>w</sup> Ordres en Conseil Vol. XXX, p37; as amended by Order in Council No. 1 of 2000.

**“premises”** includes any place and includes -

- (a) any vehicle, vessel or aircraft;
- (b) any offshore installation; and
- (c) any tent or moveable structure;

**“prohibited article”** has the meaning given by section 1(7);

**“recognised medical practitioner”** and **“recognised dentist”** have the same meaning as in the Doctors, Dentists and Pharmacists Ordinance, 1987<sup>x</sup>;

**“registered nurse”** means a person entitled to practise in the Bailiwick as a nurse according to the law for the time in force;

**“serious arrestable offence”** has the meaning assigned to it by section 90 and Schedule 4;

**“skin impression”**, in relation to any person, means any record (other than a fingerprint) which is a record (in any form and produced by any method) of the skin pattern and other physical characteristics or features of the whole or any part of his foot or of any other part of his body;

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<sup>x</sup> Recueil d’Ordonnances Tome XXIV, p79.

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**“special material”** has the meaning assigned to it by section 25;

**“speculative search”**, in relation to a person's fingerprints or samples, means such a check against other fingerprints or samples or against information derived from other samples as is referred to in section 70 (1);

**“the States”** means the States of Guernsey;

**“sufficient and “insufficient”**, in relation to a sample, means (subject to subsection (4)) sufficient or insufficient (in point of quantity or quality) for the purpose of enabling information to be produced by the means of analysis used or to be used in relation to the sample;

**“suitably qualified person”** means a recognised medical practitioner or a registered nurse;

**“terrorism provisions”** means the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002;

**“trigger offences”** means –

- (a) offences under the following provisions of the Theft (Bailiwick of Guernsey) Law, 1983 -
  - (i) section 7 (theft);

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- (ii) section 8 (robbery);
  - (iii) section 9 (burglary);
  - (iv) section 10 (aggravated burglary);
  - (v) section 12 (taking a conveyance without authority);
  - (vi) section 15 (obtaining property by deception);
  - (vii) section 25 (going equipped for stealing etc.);  
and
- (b) offences under the following provisions of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974 if committed in respect of a Class A or Class B drug –
- (i) section 3 (restriction on production and supply of controlled drug);
  - (ii) section 4(2) (possession of controlled drug);
  - (iii) section 4(3) (possession of controlled drug with intent to supply);

“vessel” includes any ship, boat, raft or other apparatus constructed or adapted for floating on water.

- (4) References in this Law to a sample’s proving insufficient

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include references to where, as a consequence of -

- (a) the loss, destruction or contamination of the whole or any part of the sample,
- (b) any damage to the whole or a part of the sample, or
- (c) the use of the whole or a part of the sample for an analysis which produced no results or which produced results some or all of which must be regarded, in the circumstances, as unreliable,

the sample has become unavailable or insufficient for the purpose of enabling information, or information of a particular description, to be obtained by means of analysis of the sample.

**Index of defined expressions**

92. In this Law the expressions listed below are defined by the provisions specified.

<i>Expression</i>	<i>Interpretation Provision</i>
Advocate	Section 91
analysis	Section 91
appropriate consent	Section 91
appropriate court	Section 59(2)
appropriate criminal intent	Section 63(16)
appropriate judicial officer	Section 91
arrestable offence	Section 28
assigned matter	Section 89(6)

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British Islands	Section 91
caravan	Section 91
Chief Officers	Section 91
child or young person	Section 91
Class A and Class B drug	Section 91
code of practice	Section 73
Committee	Part I - section 7(2) Part VI – section 73(2)
confession	Section 91
custody officer	Section 39 and 40
customs detention	Section 89(2)
Customs and Excise	Section 91
Customs laws	Schedule 5, paragraph (8)
customs office	Section 91
customs officer	Section 89(6)
dangerous instruments	Section 91
designated place of detention	Section 38
document	Section 91
drug offence search	Section 63(16)
drug trafficking and drug trafficking offence	Section 91
fingerprints	Section 91
independent person	Section 77(3), as modified by paragraph 7, Schedule 5
intimate sample	Section 91
intimate search	Section 91
Island Police Force	Section 91
journalistic material	Section 27
juvenile	Section 43(7)

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legal professional privilege and items subject thereto	Section 24
Magistrate	Section 59(5)
mentally handicapped	Section 77(3)
money laundering offence	Section 91
non intimate sample	Section 91
offensive weapon	Section 91
parent or guardian	Section 91
personal records	Section 26
police detention	Section 59(4)
police officer	Section 91
premises	Section 91
proceedings	Section 86(1)
prohibited article	Section 1(7)
recognised medical practitioner	Section 91
recognised dentist	Section 91
registered nurse	Section 91
relevant evidence	Section 8(4)
relevant time	Section 48(2)
review officer	Section 45(3)
serious arrestable offence	Section 88
Service court	Section 86(1)
skin impression	Section 91
special material	Section 25
speculative search	Section 91
States	Section 91
sufficient and insufficient sample	Section 91
suitably qualified person	Section 91
terrorism provisions	Section 91

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trigger offences	Section 91
vehicle	Section 3(12)
vessel	Section 91

**Enactment of Ordinances and regulations**

93. (1) The States may by Ordinance amend any of the provisions of this Law.

(2) Any committee of the States shall -

- (a) before making any recommendation to the States to agree to enact any Ordinance under this Law, consult the General Purposes and Finance Committee of the Chief Pleas of Sark and the Policy and Finance Committee of the States of Alderney in relation to the terms of the recommendation; and
- (b) inform the States of the views of those committees when making any such recommendation;

but a failure to comply with this subsection shall not invalidate any Ordinance so made.

(3) Any Ordinance or regulation under this Law -

- (a) may be amended or repealed by a subsequent Ordinance or regulation hereunder;
- (b) may contain such consequential, incidental,

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supplementary and transitional provision as may appear to be necessary or expedient.

(4) Any power conferred by this Law to make any Ordinance or regulation may be exercised -

(a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases;

(b) so as to make, as respects the cases in relation to which it is exercised -

(i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise);

(ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same class of case for different purposes;

(iii) any such provision either unconditionally or subject to any prescribed conditions.

(5) Any regulations made under this Law shall be laid before a meeting of the States as soon as may be after being made and if at that meeting or the next subsequent meeting the States resolve that the regulations be annulled, the regulations shall cease to have effect but without prejudice to anything done under

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the regulations or to the making of new regulations.

**Rules of court.**

**94.** (1) The Royal Court may by Order make rules dealing with all procedural matters arising under this Law and which -

- (a) may contain such supplementary, incidental, transitional and consequential provision as may appear to be necessary or expedient;
- (b) may be amended or repealed by subsequent Rules of Court; and
- (c) may make different provision in relation to proceedings before different courts of the Bailiwick.

**Amendments and repeals**

**95.** (1) The enactments mentioned in Schedule 6 to this Law shall have effect with the amendments there specified.

(2) The enactments mentioned in Schedule 7 to this Law (which includes enactments already obsolete or unnecessary) are repealed to the extent specified in that Schedule.

**Citation and Commencement**

**96.** (1) This Law may be cited as the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003.

(2) This Law shall come into force on such day as the States may by Ordinance appoint.

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**SCHEDULES**

**SCHEDULE 1**

Section 9

PROCEDURE FOR SPECIAL MATERIAL

*Making of orders by the Bailiff*

1. Subject to paragraph 3, if on an application made by a police officer the Bailiff is satisfied that the access conditions are fulfilled, he may make an order under paragraph 4.

2. The access conditions are fulfilled if –

(a) there are reasonable grounds for believing –

(i) that a serious arrestable offence has been committed;

(ii) that there is material which consists of special material or includes special material on premises specified in the application;

(iii) that the material is likely to be of substantial value (whether by itself or together with other material) to the investigation in connection with which the application is made; and

(iv) that the material is likely to be relevant evidence;

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- (b) other methods of obtaining the material have been tried without success or have not been tried because it appeared that they were bound to fail; and
- (c) it is in the public interest, having regard –
  - (i) to the benefit likely to accrue to the investigation if the material is obtained; and
  - (ii) to the circumstances under which the person in possession of the material holds it,

that the material should be produced or that access to it should be given.

3. In assessing whether it is in the public interest that the material should be produced or that access to it should be given, regard shall be had to the duty of confidentiality (as construed in accordance with section 25(2)) under which the material is held.

4. An order under this paragraph is an order that the person who appears to the Bailiff to be in possession of the material to which the application relates shall –

- (a) produce it to a police officer for him to take away; or
- (b) give a police officer access to it,

not later than the end of the period of seven days from the date of the order or the

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end of such longer period as the order may specify.

5. Where the material consists of information stored in any electronic form –

- (a) an order under paragraph 4(a) shall have effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible or from which it can readily be produced in a visible and legible form; and
- (b) an order under paragraph 4(b) shall have effect as an order to give a police officer access to the material in a form in which it is visible and legible.

6. For the purposes of sections 16 and 17 material produced in pursuance of an order under paragraph 4(a) shall be treated as if it were material seized by a police officer.

*Notices of applications for orders*

7. An application for an order under paragraph 4 shall be made *inter partes* and in private.

8. Notice of an application for such an order may be served on a person either by delivering it to him or by leaving it at his proper address or by sending it by post to him in a registered letter or by the recorded delivery service.

9. Such a notice may be served –

- (a) on a body corporate, by serving it on the body's secretary or

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- (b) other similar officer; and
- (c) on a partnership, by serving it on one of the partners.

10. For the purposes of this Schedule, and of section 11 of the Interpretation (Guernsey) Law, 1948 in its application to this Schedule, the proper address of a person, in the case of a secretary or other similar officer of a body corporate, shall be that of the registered or principal office of that body, in the case of a partner of a firm shall be that of the principal office of the firm, and in any other case shall be the last known address of the person to be served.

11. Where notice of an application for an order under paragraph 4 has been served on a person, he shall not conceal, destroy, alter or dispose of the material to which the application relates except with the leave of the Bailiff or with the written permission of a police officer until –

- (a) the application is dismissed or abandoned; or
- (b) he has complied with an order under paragraph 4 made on the application.

*Issue of warrants by the Bailiff*

12. If on application made by a police officer the Bailiff is satisfied –

- (a) that the access conditions in paragraph 2 are fulfilled; and
- (b) that any of the further conditions set out in paragraph 14 is also fulfilled;

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or that an order under paragraph 4 relating to the material has not been complied with, he may issue a warrant authorising a police officer to enter and search the premises.

13. A police officer may seize and retain anything for which a search has been authorised under paragraph 12.

14. The further conditions mentioned in paragraph 12 (b) are –

(a) that it is not practicable to communicate with any person entitled to grant entry to the premises to which the application relates;

(b) that it is practicable to communicate with a person entitled to grant entry to the premises but it is not practicable to communicate with any person entitled to grant access to the material;

(c) that the material contains information which –

(i) is subject to a restriction or obligation such as is mentioned in section 25 (2)(b); and

(ii) is likely to be disclosed in breach of it if a warrant is not issued;

(d) that service of notice of an application for an order under paragraph 4 may seriously prejudice the investigation.

15. (1) If a person fails to comply with an order under paragraph 4,

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the Bailiff may deal with him as if he had committed a contempt of Court.

*Costs*

16. The costs of any application under this Schedule and of anything done or to be done in pursuance of an order made under it shall be in the discretion of the Bailiff.

**SCHEDULE 2**

Section 9(3)(a)

**PRESERVED WARRANT POWERS**

*Section 9(2) does not apply to the following enactments –*

1. The Dangerous Weapons (Alderney) Law, 1965<sup>y</sup>.
2. The Criminal Justice (Fraud Investigation) (Bailiwick of Guernsey) Law, 1991<sup>z</sup>.
3. The Banking Supervision (Bailiwick of Guernsey) Law, 1994<sup>aa</sup>.
4. The Firearms (Guernsey) Law, 1998<sup>bb</sup>.
5. The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999<sup>cc</sup>.
6. The Drug Trafficking (Bailiwick of Guernsey) Law, 2000.
7. The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000.
8. The Criminal Justice (International Co-operation) (Bailiwick of Guernsey) Law, 2001<sup>dd</sup>.

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<sup>y</sup> Ordres en Conseil, Vol. XX, p35.

<sup>z</sup> Order in Council No. III of 1991.

<sup>aa</sup> Order in Council No. XIII of 1994.

<sup>bb</sup> Order in Council XII of 1998.

<sup>cc</sup> Order in Council No. VIII of 1999.

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9. The Firearms (Sark) Law, 2001<sup>ee</sup>.
10. The Insurance Business (Bailiwick of Guernsey) Law, 2002<sup>ff</sup>.
11. The Terrorism and Crime (Bailiwick of Guernsey) Law, 2002.
12. The Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002<sup>gg</sup>

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**dd** Order in Council No. VII of 2001.

**ee** Order in Council No. XII of 2002.

**ff** Order in Council No. XXI of 2002.

**gg** Order in Council No. XXII of 2002.

**SCHEDULE 3**

Section 30

**PRESERVED POWERS OF ARREST**

1. Section 41 of the Mental Treatment (Guernsey) Law, 1939<sup>hh</sup>
2. Sections 186 and 190B of the Army Act 1955.
3. Sections 186 and 190B of the Air Force Act 1955.
4. Sections 104 and 105 of the Naval Discipline Act 1957.
5. Section 32 of the Children and Young Persons Act 1969.
6. Section 24(2) of the Immigration Act 1971, and paragraphs 17, 24, and 33 of Schedule 2 and paragraph 7 of Schedule 3 to that Act.
7. Section 8 of the Protection of Animals Ordinance, 1976<sup>ii</sup>
8. Section 6(1) of the Protection of Children (Bailiwick of Guernsey) Law, 1985.

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<sup>hh</sup> Ordres en Conseil Vol. XI, p405.

<sup>ii</sup> Recueil d'Ordonnances Tome XX, p369.

**SCHEDULE 4**

Section 88

**SERIOUS ARRESTABLE OFFENCES**

**PART I**

**OFFENCES MENTIONED IN SECTION 88(2)(a)**

1. Treason
2. Murder
3. Manslaughter
4. Rape
5. Kidnapping
6. Incest with a girl under the age of 13
7. Buggery with a person under the age of 16
8. Indecent assault which constitutes an act of gross indecency

**PART II**

**OFFENCES MENTIONED IN SECTION 88(2)(b)**

1. Sections 2 and 3 of the Explosive Substances Laws 1939 and 1976<sup>jj</sup>.
2. Section 2 of the Loi relative à la protection des femmes et des filles mineures.
3. Sections 17, 18 and 19 of the Firearms (Guernsey) Law, 1998.
4. Sections 16, 17 and 18 of the Firearms (Sark) Law, 2001.

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<sup>jj</sup> Ordres en Conseil Vol. XI, p396; Vol. XXVI, p52.

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5. Section 5 of the Dangerous Weapons (Alderney) Law, 1965
6. Section 11 of the Administration of Justice (Bailiwick of Guernsey) Law, 1991<sup>kk</sup>.
7. Section 1 of the Vehicular Traffic (Causing Death by Driving) Law, 1957<sup>ll</sup>.
8. Sections 1 and 3 of the Protection of Children (Bailiwick of Guernsey) Law, 1985.

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<sup>kk</sup> Order in Council No. I of 1991.

<sup>ll</sup> Ordres en Conseil Vol. XVII, p279.

**SCHEDULE 5**

Section 89

**APPLICATION OF LAW TO CUSTOMS AND EXCISE**

**Application of provisions to Customs and Excise**

1. Subject to the modifications in paragraphs 2 to 8 of this Schedule, the provisions of this Law which relate to the investigation of offences conducted by police officers or to persons detained by police officers shall apply to –

- (a) the investigation of offences conducted by customs officers which relate to assigned matters;
- (b) investigations into any offences conducted by customs officers and carried out jointly with police officers; or
- (c) persons detained by customs officers.

**Equivalent words and phrases**

2. This Law shall have effect as if the words and phrases listed below are replaced by the substitute words and phrases.

<i>Words or Phrases</i>	<i>Substitute words or phrases</i>
Island Police Force	Customs and Excise
Police detention	Customs detention
Police officer	Customs officer
Police station	Customs office
Station	Customs office

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**Equivalent titles of officers**

3. Where in this Law any act or thing is to be done by a police officer of a specified rank, that act or thing shall be done by a customs officer of at least the equivalent level specified in the following list –

<i>Police Officer</i>	<i>Customs Officer</i>
Chief Inspector	Surveyor (or Branch Manager)
Inspector	Senior Officer or Senior Investigation Officer
Sergeant	Executive Customs Officer

4. Section 16 shall not apply to any thing seized as liable to forfeiture under the Customs laws.

5. In its application to Customs and Excise by virtue of paragraph 1, this Law shall have effect as if the following section were inserted after section 25-

**“25A.** Material in the possession of a person who acquired or created it in the course of any trade, business, profession or other occupation or for the purpose of any paid or unpaid office and which relates to an assigned matter is not special material for the purposes of any enactment such as is mentioned in section 9(3).”.

6. In its application to customs officers by virtue of paragraph 1 of this Schedule, section 13(1) of this Law shall be modified as follows –

**“13.** (1) Subject to the following provisions of this section, a customs officer may enter and search any premises occupied or controlled by a person who is under arrest for any

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arrestable offence which relates to an assigned matter if he has reasonable grounds for suspecting that there is on the premises evidence, other than items subject to legal professional privilege, that relates –

- (a) to that offence; or
- (b) to some other arrestable offence which is connected with or similar to that offence.”.

7. In its application to customs officers by virtue of paragraph 1 of this Schedule, Section 77(3) of this Law shall be modified to the extent that the definition of “**independent person**” shall, in addition to the persons mentioned therein, also include an officer or any other person acting under the authority of the Chief Officer of Customs and Excise.

8. “Arrested”, “arresting”, “arrest” and “to arrest” shall respectively be substituted for “detained”, “detaining”, “detention” and “to detain” wherever in the Customs laws, as defined in section 1(1) of the 1972 Law, those words are used in relation to persons.

**SCHEDULE 6**

Section 95(1)

**CONSEQUENTIAL AMENDMENTS**

1. Loi portant règlement pour mesurer et photographier des prisonniers condamnés ou accusés de crime, 1923<sup>mm</sup> –

In Article 1 after “Sujet aux reglements qui ensuivant”, insert “ et sujet aux dispositions du Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003”.

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<sup>mm</sup> Ordres en Conseil Vol. VII, p86.

**SCHEDULE 7**

Section 95(2)

**REPEALS**

1. In the Loi relative aux preuves au criminel, 1923<sup>nn</sup> - Article I (d).
2. In the Loi portant règlement pour mesurer et photographier des prisonniers condamnés ou accusés de crime, 1923 - Article (3) and from Article (4)(b) to the end of the Law.
3. The Powers of Police Search Ordinance, 1942<sup>oo</sup> - the whole Ordinance.

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<sup>nn</sup> Ordres en Conseil Vol. VII, p. 45.

<sup>oo</sup> Recueil des Ordonnances Tome X, p. 147.