

ORDER IN COUNCIL

**XXX
2003**

ratifying a Projet de Loi

ENTITLED

The Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003

(Registered on the Records of the Island of Guernsey
on the 18th December, 2003.)



2003

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 18th day of December, 2003 before Geoffrey Robert Rowland, Esquire, Deputy Bailiff; present:– David Charles Lowe, Laurence Lenfestey Guille, Derek Martin Le Page, Alan Cecil Bisson, David Michael Jory, Keith Bichard, OBE, Esquires, The Reverend Peter Gerald Lane, Michael John Wilson, Michael Henry De La Mare, and Michael John Tanguy, Esquires, Jurats.

The Deputy Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 13th day of November, 2003, approving and ratifying a Projet de Loi of the States of Guernsey entitled “The Regulation of Investigatory Powers (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 13th day of November, 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 24th of April, 2002, the States of Deliberation at a meeting on the 24th September, 2003, approved a Projet de Loi entitled “The Regulation of Investigatory Powers (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 Regulation of Investigatory Powers (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 Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003

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The Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003

THE STATES, in pursuance of their Resolution of the 24th day of April, 2002^a, 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 COMMUNICATIONS

CHAPTER I INTERCEPTION

Unlawful and authorised interception

Unlawful interception

1. (1) It shall be an offence for a person intentionally and without lawful authority to intercept, at any place in the Bailiwick, any communication in the course of its transmission by means of -

(a) a public postal service; or

^a Article VI of Billet d'État No. VI of 2002.

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(b) a public telecommunication system.

(2) It shall be an offence for a person -

(a) intentionally and without lawful authority; and

(b) otherwise than in circumstances in which his conduct is excluded by subsection (6) from criminal liability under this subsection,

to intercept, at any place in the Bailiwick, any communication in the course of its transmission by means of a private telecommunication system.

(3) Any interception of a communication which is carried out at any place in the Bailiwick by, or with the express or implied consent of, a person having the right to control the operation or the use of a private telecommunication system shall be actionable at the suit or instance of the sender or recipient, or intended recipient, of the communication if it is without lawful authority and is either -

(a) an interception of that communication in the course of its transmission by means of that private system; or

(b) an interception of that communication in the course of its transmission, by means of a public telecommunication system, to or from apparatus comprised in that private telecommunication system.

(4) Where the Bailiwick is bound by an international agreement

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which -

- (a) relates to the provision of mutual assistance in connection with, or in the form of, the interception of communications,
- (b) requires the issue of a warrant, order or equivalent instrument in cases in which assistance is given, and
- (c) is designated for the purposes of this subsection by an Order made by the Committee,

it shall be the duty of Her Majesty's Procureur to secure that no request for assistance in accordance with the agreement is made on behalf of a person in the Bailiwick to the competent authorities of a country or territory outside the Bailiwick except with lawful authority.

(5) Conduct has lawful authority for the purposes of this section if, and only if -

- (a) it is authorised by or under section 3 or 4;
- (b) it takes place in accordance with a warrant under section 5 (“**an interception warrant**”); or
- (c) it is in exercise, in relation to any stored communication, of any statutory power that is exercised (apart from this section) for the purpose of obtaining information or of taking possession of any document or other property,

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and conduct (whether or not prohibited by this section) which has lawful authority for the purposes of this section by virtue of paragraph (a) or (b) shall also be taken to be lawful for all other purposes.

(6) The circumstances in which a person makes an interception of a communication in the course of its transmission by means of a private telecommunication system are such that his conduct is excluded from criminal liability under subsection (2) if -

- (a) he is a person with a right to control the operation or the use of the system; or
- (b) he has the express or implied consent of such a person to make the interception.

(7) A person who is guilty of an offence under subsection (1) or (2) shall be liable -

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

Meaning and location of “interception” etc.

2. (1) For the purposes of this Law, but subject to the following provisions of this section, a person intercepts a communication in the course of its transmission by means of a telecommunication system if, and only if, he -

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- (a) so modifies or interferes with the system, or its operation,
- (b) so monitors transmissions made by means of the system, or
- (c) so monitors transmissions made by wireless telegraphy to or from apparatus comprised in the system,

as to make some or all of the contents of the communication available, while being transmitted, to a person other than the sender or intended recipient of the communication.

(2) References in this Law to the interception of a communication do not include references to the interception of any communication broadcast for general reception.

(3) For the purposes of this Law the interception of a communication takes place in the Bailiwick if, and only if, the modification, interference or monitoring or, in the case of a postal item, the interception is effected by conduct within the Bailiwick and the communication is either -

- (a) intercepted in the course of its transmission by means of a public postal service or public telecommunication system; or
- (b) intercepted in the course of its transmission by means of a private telecommunication system in a case in which the sender or intended recipient of the communication is in the Bailiwick.

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(4) References in this Law to the interception of a communication in the course of its transmission by means of a postal service or telecommunication system do not include references to -

- (a) any conduct that takes place in relation only to so much of the communication as consists in any traffic data comprised in or attached to a communication (whether by the sender or otherwise) for the purposes of any postal service or telecommunication system by means of which it is being or may be transmitted; or
- (b) any such conduct, in connection with conduct falling within paragraph (a), as gives a person who is neither the sender nor the intended recipient only so much access to a communication as is necessary for the purpose of identifying traffic data so comprised or attached.

(5) For the purposes of this section references to the modification of a telecommunication system include references to the attachment of any apparatus to, or other modification of or interference with -

- (a) any part of the system; or
- (b) any wireless telegraphy apparatus used for making transmissions to or from apparatus comprised in the system.

(6) For the purposes of this section the times while a

communication is being transmitted by means of a telecommunication system shall be taken to include any time when the system by means of which the communication is being, or has been, transmitted is used for storing it in a manner that enables the intended recipient to collect it or otherwise to have access to it.

(7) For the purposes of this section the cases in which any contents of a communication are to be taken to be made available to a person while being transmitted shall include any case in which any of the contents of the communication, while being transmitted, are diverted or recorded so as to be available to a person subsequently.

Lawful interception without an interception warrant

3. (1) Conduct by any person consisting in the interception of a communication is authorised by this section if the communication is one which, or which that person has reasonable grounds for believing, is both -

- (a) a communication sent by a person who has consented to the interception; and
- (b) a communication the intended recipient of which has so consented.

(2) Conduct by any person consisting in the interception of a communication is authorised by this section if -

- (a) the communication is one sent by, or intended for, a person who has consented to the interception; and
- (b) surveillance by means of that interception has been authorised under Part II of this Law.

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(3) Conduct consisting in the interception of a communication is authorised by this section if -

- (a) it is conduct by or on behalf of a person who provides a postal service or a telecommunications service; and
- (b) it takes place for purposes connected with the provision or operation of that service or with the enforcement, in relation to that service, of any enactment relating to the use of postal services or telecommunications services.

(4) Conduct by any person consisting in the interception of a communication in the course of its transmission by means of wireless telegraphy is authorised by this section if it takes place -

- (a) with the authority of the Secretary of State under section 5 of the Wireless Telegraphy Act 1949^b (misleading messages and interception and disclosure of wireless telegraphy messages); and
- (b) for purposes connected with anything falling within subsection (5).

(5) Each of the following falls within this subsection -

^b An Act of Parliament (1949 Ch.54), extended to the Bailiwick by the Wireless Telegraphy (Channel Islands) Order, 1952.

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- (a) the issue of licences under the Wireless Telegraphy Act 1949; and
- (b) the prevention or detection of anything which constitutes interference with wireless telegraphy.

Powers to provide for lawful interception

4. (1) Conduct by any person (“the interceptor”) consisting in the interception of a communication in the course of its transmission by means of a telecommunication system is authorised by this section if -

- (a) the interception is carried out for the purpose of obtaining information about the communications of a person who, or who the interceptor has reasonable grounds for believing, is in a country or territory outside the Bailiwick;
- (b) the interception relates to the use of a telecommunications service provided to persons in that country or territory which is either -
 - (i) a public telecommunications service; or
 - (ii) a telecommunications service that would be a public telecommunications service if the persons to whom it is offered or provided were members of the public in a part of the Bailiwick;
- (c) the person who provides that service (whether the

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interceptor or another person) is required by the law of that country or territory to carry out, secure or facilitate the interception in question;

- (d) the situation is one in relation to which such further conditions as may be prescribed by regulations made by the Committee are required to be satisfied before conduct may be treated as authorised by virtue of this subsection; and
- (e) the conditions so prescribed are satisfied in relation to that situation.

(2) Subject to subsection (3), the Committee may by regulations authorise any such conduct described in the regulations as appears to it to constitute a legitimate practice reasonably required for the purpose, in connection with the carrying on of any business, of monitoring or keeping a record of -

- (a) communications by means of which transactions are entered into in the course of that business; or
- (b) other communications relating to that business or taking place in the course of its being carried on.

(3) Nothing in any regulations under subsection (2) shall authorise the interception of any communication except in the course of its transmission using apparatus or services provided by or to the person carrying on the business for use wholly or partly in connection with that business.

(4) Conduct taking place in the prison is authorised by this

section if it is conduct in exercise of any power conferred by or under any Ordinance under section 3 of the Prison Administration (Guernsey) Law, 1949^c.

(5) In this section references to a business include references to any activities of a government department, of any public authority or of any person or office holder on whom functions are conferred by or under any enactment.

Interception with a warrant

5. (1) Subject to the following provisions of this Chapter, Her Majesty's Procureur may issue a warrant authorising or requiring the person to whom it is addressed, by any such conduct as may be described in the warrant, to secure any one or more of the following -

- (a) the interception in the course of their transmission by means of a postal service or telecommunication system of the communications described in the warrant;
- (b) the making, in accordance with an international mutual assistance agreement, of a request for the provision of such assistance in connection with, or in the form of, an interception of communications as may be so described;
- (c) the provision, in accordance with an international mutual assistance agreement, to the competent authorities of a country or territory outside the Bailiwick of any such assistance in connection with, or

^c Ordres en Conseil Vol. XIV, p.159; and Vol. XVII, p.235.

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in the form of, an interception of communications as may be so described;

- (d) the disclosure, in such manner as may be so described, of intercepted material obtained by any interception authorised or required by the warrant, and of related communications data.

(2) Her Majesty's Procureur shall not issue an interception warrant unless he believes -

- (a) that the warrant is necessary on grounds falling within subsection (3); and
- (b) that the conduct authorised by the warrant is proportionate to what is sought to be achieved by that conduct.

(3) Subject to the following provisions of this section, a warrant is necessary on grounds falling within this subsection if it is necessary -

- (a) in the interests of national security;
- (b) for the purpose of preventing or detecting serious crime;
- (c) for the purpose of safeguarding the economic well-being of the Bailiwick; or
- (d) for the purpose, in circumstances appearing to Her

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Majesty's Procureur to be equivalent to those in which he would issue a warrant by virtue of paragraph (b), of giving effect to the provisions of any international mutual assistance agreement.

(4) The matters to be taken into account in considering whether the requirements of subsection (2) are satisfied in the case of any warrant shall include whether the information which it is thought necessary to obtain under the warrant could reasonably be obtained by other means.

(5) A warrant shall not be considered necessary on the ground falling within subsection (3)(c) unless the information which it is thought necessary to obtain is information relating to the acts or intentions of persons outside the Bailiwick.

(6) The conduct authorised by an interception warrant shall be taken to include -

- (a) all such conduct (including the interception of communications not identified by the warrant) as it is necessary to undertake in order to do what is expressly authorised or required by the warrant;
- (b) conduct for obtaining related communications data;
and
- (c) conduct by any person which is conduct in pursuance of a requirement imposed by or on behalf of the person to whom the warrant is addressed to be provided with assistance with giving effect to the

warrant.

Interception warrants

Application for and issue of an interception warrant

6. (1) An interception warrant shall not be issued except on an application by or on behalf of the following persons –

- (a) the Chief Officer of the Island Police Force;
- (b) the Chief Officer of Customs and Excise;
- (c) the Director General of the Security Service;
- (d) the Chief of the Secret Intelligence Service;
- (e) the Director of GCHQ;
- (f) a person who, for the purposes of any international mutual assistance agreement, is the competent authority of a country or territory outside the Bailiwick.

(2) An interception warrant shall not be issued except under the hand of Her Majesty's Procureur.

(3) An interception warrant must be addressed to the person falling within subsection (1) by whom, or on whose behalf, the application is made.

Contents of warrants

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7. (1) An interception warrant must name or describe either -

- (a) one person as the interception subject; or
- (b) a single set of premises as the premises in relation to which the interception to which the warrant relates is to take place.

(2) The provisions of an interception warrant describing communications the interception of which is authorised or required by the warrant must comprise one or more schedules setting out the addresses, numbers, apparatus or other factors, or combination of factors, that are to be used for identifying the communications that may be or are to be intercepted.

(3) Any factor or combination of factors set out in accordance with subsection (2) must be one that identifies communications which are likely to be or to include -

- (a) communications from, or intended for, the persons named or described in the warrant in accordance with subsection (1); or
- (b) communications originating on, or intended for transmission to, the premises so named or described.

(4) Subsections (1) and (2) shall not apply to an interception warrant if -

- (a) the description of communications to which the warrant relates confines the conduct authorised or

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required by the warrant to conduct falling within subsection (5); and

(b) at the time of the issue of the warrant, a certificate applicable to the warrant has been issued by Her Majesty's Procureur certifying -

(i) the descriptions of intercepted material the examination of which he considers necessary; and

(ii) that he considers the examination of material of those descriptions necessary as mentioned in section 5(3)(a), (b) or (c).

(5) Conduct falls within this subsection if it consists in -

(a) the interception of external communications in the course of their transmission by means of a telecommunication system; and

(b) any conduct authorised in relation to any such interception by section 5(6).

(6) A certificate for the purposes of subsection (4) shall not be issued except under the hand of Her Majesty's Procureur.

(7) An interception warrant issued under this section may contain such conditions as Her Majesty's Procureur considers necessary or appropriate to secure the requirements of this Law.

Duration, cancellation and renewal of warrants

8. (1) An interception warrant -

(a) shall cease to have effect at the end of the relevant period; but

(b) may be renewed, at any time before the end of that period, by an instrument under the hand of Her Majesty's Procureur.

(2) An interception warrant shall not be renewed under subsection (1) unless Her Majesty's Procureur believes that the warrant continues to be necessary on grounds falling within section 5(3).

(3) Her Majesty's Procureur shall cancel an interception warrant if he is satisfied that the warrant is no longer necessary on grounds falling within section 5(3).

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

(a) in relation to a renewed warrant the latest renewal of which was by an instrument endorsed under the hand of Her Majesty's Procureur with a statement that the renewal is believed to be necessary on grounds falling within section 5(3)(a) or (c), means the period of six months beginning with the day of the warrant's renewal; and

(b) in all other cases, means the period of three months

beginning with the day of the warrant's issue or, in the case of a warrant that has been renewed, of its latest renewal.

Modification of warrants and certificates

9. (1) Her Majesty's Procureur may at any time -

- (a) modify the provisions of an interception warrant; or
- (b) modify a section 7(4) certificate so as to include in the certified material any material the examination of which he considers to be necessary as mentioned in section 5(3)(a), (b) or (c).

(2) If at any time Her Majesty's Procureur considers that any factor set out in a schedule to an interception warrant is no longer relevant for identifying communications which, in the case of that warrant, are likely to be or to include communications falling within section 7(3)(a) or (b), he shall modify the warrant by the deletion of that factor.

(3) If at any time Her Majesty's Procureur considers that the material certified by a section 7(4) certificate includes any material the examination of which is no longer necessary as mentioned in any of paragraphs (a) to (c) of section 5(3), he shall modify the certificate so as to exclude that material from the certified material.

(4) A warrant or certificate shall not be modified under this section except by an instrument under the hand of Her Majesty's Procureur.

Implementation of warrants

10. (1) Effect may be given to an interception warrant either -

- (a) by the person to whom it is addressed; or
- (b) by that person acting through, or together with, such other persons as he may require (whether under subsection (2) or otherwise) to provide him with assistance with giving effect to the warrant.

(2) For the purpose of requiring any person to provide assistance in relation to an interception warrant the person to whom it is addressed may -

- (a) serve a copy of the warrant on such persons as he considers may be able to provide such assistance; or
- (b) make arrangements under which a copy of it is to be or may be so served.

(3) The copy of an interception warrant that is served on any person under subsection (2) may, to the extent authorised -

- (a) by the person to whom the warrant is addressed, or
- (b) by the arrangements made by him for the purposes of that subsection,

omit any one or more of the schedules to the warrant.

(4) Where a copy of an interception warrant has been served by

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or on behalf of the person to whom it is addressed on -

- (a) a person who provides a postal service,
- (b) a person who provides a public telecommunications service, or
- (c) a person not falling within paragraph (b) who has control of the whole or any part of a telecommunication system located wholly or partly in the Bailiwick,

it shall (subject to subsection (5)) be the duty of that person to take all such steps for giving effect to the warrant as are notified to him by or on behalf of the person to whom the warrant is addressed.

(5) A person who is under a duty by virtue of subsection (4) to take steps for giving effect to a warrant shall not be required to take any steps which it is not reasonably practicable for him to take.

(6) For the purposes of subsection (5) the steps which it is reasonably practicable for a person to take in a case in which obligations have been imposed on him by or under section 11 shall include every step which it would have been reasonably practicable for him to take had he complied with all the obligations so imposed on him.

(7) A person who knowingly fails to comply with his duty under subsection (4) shall be guilty of an offence and liable -

- (a) on conviction on indictment, to imprisonment for a

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term not exceeding two years or to a fine, or to both;

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

(8) A person's duty under subsection (4) to take steps for giving effect to a warrant shall be enforceable by civil proceedings by Her Majesty's Procureur for an injunction or for any other appropriate relief.

(9) For the purposes of this Law the provision of assistance with giving effect to an interception warrant includes any disclosure to the person to whom the warrant is addressed, or to persons acting on his behalf, of intercepted material obtained by any interception authorised or required by the warrant, and of any related communications data.

Interception capability

Maintenance of interception capability

11. (1) The Committee may by regulation provide for the imposition by them on persons who -

- (a) are providing public postal services or public telecommunications services, or
- (b) are proposing to do so,

of such obligations as it appears to Her Majesty's Procureur reasonable to impose for the purpose of securing that it is and remains practicable for requirements to provide assistance in relation to interception warrants to be imposed and complied

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with.

(2) Her Majesty's Procureur's power to impose the obligations provided for by regulations under this section shall be exercisable by the giving, in accordance with the regulations, of a notice requiring the person who is to be subject to the obligations to take all such steps as may be specified or described in the notice.

(3) Subject to subsection (10), the only steps that may be specified or described in a notice given to a person under subsection (2) are steps appearing to Her Majesty's Procureur to be necessary for securing that that person has the practical capability of providing any assistance which he may be required to provide in relation to relevant interception warrants.

(4) A person shall not be liable to have an obligation imposed on him in accordance with regulations under this section by reason only that he provides, or is proposing to provide, to members of the public a telecommunications service the provision of which is or, as the case may be, will be no more than -

- (a) the means by which he provides a service which is not a telecommunications service; or
- (b) necessarily incidental to the provision by him of a service which is not a telecommunications service.

(5) Where a notice is given to any person under subsection (2) and otherwise than by virtue of subsection (6)(c), that person may, before the end of such period as may be specified in regulations under this section, refer the notice to the Technical Advisory Panel established under subsection (12).

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(6) Where a notice given to any person under subsection (2) is referred to the Technical Advisory Panel under subsection (5) -

- (a) there shall be no requirement for that person to comply, except in pursuance of a notice under paragraph (c)(ii), with any obligations imposed by the notice;
- (b) the Panel shall consider the technical requirements and the financial consequences, for the person making the reference, of the notice referred to them and shall report their conclusions on those matters to that person and to Her Majesty's Procureur; and
- (c) Her Majesty's Procureur, after considering any report of the Panel relating to the notice, may either -
 - (i) withdraw the notice; or
 - (ii) give a further notice under subsection (2) confirming its effect, with or without modifications.

(7) It shall be the duty of a person to whom a notice is given under subsection (2) to comply with the notice; and that duty shall be enforceable by civil proceedings by Her Majesty's Procureur for an injunction or for any other appropriate relief.

(8) A notice for the purposes of subsection (2) must specify such

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period as appears to Her Majesty's Procureur to be reasonable as the period within which the steps specified or described in the notice are to be taken.

(9) Before making regulations under this section the Committee shall consult with -

- (a) such persons appearing to them to be likely to be subject to the obligations for which it provides,
- (b) the Technical Advisory Panel,
- (c) such persons representing persons falling within paragraph (a),
- (d) such persons with statutory functions in relation to persons falling within that paragraph, and
- (e) Her Majesty's Procureur,

as it considers appropriate.

(10) For the purposes of this section the question whether a person has the practical capability of providing assistance in relation to relevant interception warrants shall include the question whether all such arrangements have been made as Her Majesty's Procureur considers necessary -

- (a) with respect to the disclosure of intercepted material;
- (b) for the purpose of ensuring that security and confidentiality are maintained in relation to, and to

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matters connected with, the provision of any such assistance; and

- (c) for the purpose of facilitating the carrying out of any functions in relation to this Chapter of the Commissioner;

but before determining for the purposes of the making of any regulations or the imposition of any obligation under this section what arrangements are considered necessary for the purpose mentioned in paragraph (c), Her Majesty's Procureur shall consult the Commissioner.

(11) In this section "**relevant interception warrant**" -

- (a) in relation to a person providing a public postal service, means an interception warrant relating to the interception of communications in the course of their transmission by means of that service; and
- (b) in relation to a person providing a public telecommunications service, means an interception warrant relating to the interception of communications in the course of their transmission by means of a telecommunication system used for the purposes of that service.

(12) There shall be a Technical Advisory Panel consisting of such number of persons as the Committee may by regulations provide.

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(13) Regulations providing for the membership of the Technical Advisory Panel must also make provision which is calculated to ensure -

- (a) that the membership of the Technical Advisory Panel includes persons likely effectively to represent the interests of the persons on whom obligations may be imposed under this section;
- (b) that the membership of the Panel includes persons likely effectively to represent the interests of the persons by or on whose behalf applications for interception warrants may be made;
- (c) that such other persons (if any) as the Committee thinks fit may be appointed to be members of the Panel; and
- (d) that the Panel is so constituted as to produce a balance between the representation of those mentioned in paragraph (b).

Restrictions on use of intercepted material etc.

General Safeguards

12. (1) Subject to subsection (6), it shall be the duty of Her Majesty's Procureur to ensure, in relation to all interception warrants, that such arrangements are in force as he considers necessary for securing -

- (a) that the requirements of subsections (2) and (3) are satisfied in relation to the intercepted material and any

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related communications data; and

- (b) in the case of warrants in relation to which there are section 7(4) certificates, that the requirements of section 13 are also satisfied.

(2) The requirements of this subsection are satisfied in relation to the intercepted material and any related communications data if each of the following -

- (a) the number of persons to whom any of the material or data is disclosed or otherwise made available,
- (b) the extent to which any of the material or data is disclosed or otherwise made available,
- (c) the extent to which any of the material or data is copied, and
- (d) the number of copies that are made,

is limited to the minimum that is necessary for the authorised purposes.

(3) The requirements of this subsection are satisfied in relation to the intercepted material and any related communications data if each copy made of any of the material or data (if not destroyed earlier) is destroyed as soon as there are no longer any grounds for retaining it as necessary for any of the authorised purposes.

- (4) For the purposes of this section something is necessary for the

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authorised purposes if, and only if -

- (a) it continues to be, or is likely to become, necessary as mentioned in section 5(3);
- (b) it is necessary for facilitating the carrying out of any of the functions under this Chapter of Her Majesty's Procureur;
- (c) it is necessary for facilitating the carrying out of any functions in relation to this Part of the Commissioner or of the Tribunal; or
- (d) it is necessary to ensure that a person conducting a criminal prosecution has the information he needs to determine what is required of him by his duty to secure the fairness of the prosecution.

(5) The arrangements for the time being in force under this section for securing that the requirements of subsection (2) are satisfied in relation to the intercepted material or any related communications data shall include such arrangements as Her Majesty's Procureur considers necessary for securing that every copy of the material or data that is made is stored, for so long as it is retained, in a secure manner.

(6) Arrangements in relation to interception warrants which are made for the purposes of subsection (1) -

- (a) shall not be required to secure that the requirements of subsections (2) and (3) are satisfied in so far as they

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relate to any of the intercepted material or related communications data, or any copy of any such material or data, possession of which has been surrendered to any authorities of a country or territory outside the Bailiwick; but

- (b) shall be required to secure, in the case of every such warrant, that possession of the intercepted material and data and of copies of the material or data is surrendered to authorities of a country or territory outside the Bailiwick only if the requirements of subsection (7) are satisfied.

(7) The requirements of this subsection are satisfied in the case of a warrant if it appears to Her Majesty's Procureur -

- (a) that requirements corresponding to those of subsections (2) and (3) will apply, to such extent (if any) as Her Majesty's Procureur thinks fit, in relation to any of the intercepted material or related communications data possession of which, or of any copy of which, is surrendered to the authorities in question; and
- (b) that restrictions are in force which would prevent, to such extent (if any) as Her Majesty's Procureur thinks fit, the doing of anything in, for the purposes of or in connection with any proceedings outside the Bailiwick which would result in such a disclosure as, by virtue of section 15, could not be made in the Bailiwick.

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(8) In this section “**copy**”, in relation to the intercepted material or related communications data, means any of the following (whether or not in documentary form) -

- (a) any copy, extract or summary of the material or data which identifies itself as the product of an interception, and
- (b) any record referring to an interception which is a record of the identities of the persons to or by whom the intercepted material was sent, or to whom the communications data relates,

and “**copied**” shall be construed accordingly.

Extra safeguards in the case of certificated warrants

13. (1) For the purposes of section 12 the requirements of this section, in the case of an interception warrant in relation to which there is a section 7(4) certificate, are that the intercepted material is read, looked at or listened to by the persons to whom it becomes available by virtue of the warrant to the extent only that it -

- (a) has been certified as material the examination of which is necessary as mentioned in section 5(3)(a), (b) or (c);
and
- (b) falls within subsection (2).

(2) Subject to subsections (3) and (4), intercepted material falls

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within this subsection so far only as it is selected to be read, looked at or listened to otherwise than according to a factor which -

- (a) is referable to an individual who is known to be for the time being in the British Islands; and
- (b) has as its purpose, or one of its purposes, the identification of material contained in communications sent by him, or intended for him.

(3) Intercepted material falls within subsection (2), notwithstanding that it is selected by reference to any such factor as is mentioned in paragraph (a) and (b) of that subsection, if -

- (a) it is certified by Her Majesty's Procureur for the purposes of section 7(4) that the examination of material selected according to factors referable to the individual in question is necessary as mentioned in subsection 5(3)(a), (b) or (c); and
- (b) the material relates only to communications sent during a period of not more than three months specified in the certificate.

(4) Intercepted material also falls within subsection (2), notwithstanding that it is selected by reference to any such factor as is mentioned in paragraph (a) and (b) of that subsection, if -

- (a) the person to whom the interception warrant is addressed believes, on reasonable grounds, that the

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circumstances are such that the material would fall within that subsection; or

- (b) the conditions set out in subsection (5) are satisfied in relation to the selection of the material.

(5) Those conditions are satisfied in relation to the selection of intercepted material if -

- (a) it has appeared to the person to whom the interception warrant is addressed that there has been such a relevant change of circumstances as, but for subsection (4)(b), would prevent the intercepted material from falling within subsection (2);
- (b) since it first so appeared, a written authorisation to read, look at or listen to the material has been given by Her Majesty's Procureur; and
- (c) the selection is made before the end of the first working day after the day on which it first so appeared to that person.

(6) Reference in this section to its appearing that there has been a relevant change of circumstances are references to its appearing either -

- (a) that the individual in question has entered the British Islands; or
- (b) that a belief by the person to whom the warrant is

addressed in the individual's presence outside the British Islands was in fact mistaken.

Exclusion of matters from legal proceedings

14. (1) Subject to section 15, no evidence shall be adduced, question asked, assertion or disclosure made or other thing done in, for the purposes of or in connection with any legal proceedings which (in any manner) -

- (a) discloses, in circumstances from which its origin in anything falling within subsection (2) may be inferred, any of the contents of an intercepted communication or any related communications data; or
- (b) tends (apart from any such disclosure) to suggest that anything falling within subsection (2) has or may have occurred or be going to occur.

(2) The following fall within this subsection -

- (a) conduct by a person falling within subsection (3) that was or would be an offence under section 1(1) or (2) of this Law or under section 1 of the Interception of Communications (Bailiwick of Guernsey) Law, 1997^d (“**the 1997 Law**”);
- (b) a breach by Her Majesty's Procureur of his duty under section 1(4) of this Law;

^d Order in Council No. XIII of 1997.

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- (c) the issue of an interception warrant or of a warrant under the 1997 Law;
 - (d) the making of an application by any person for an interception warrant, or for a warrant under the 1997 Law;
 - (e) the imposition of any requirement on any person to provide assistance with giving effect to an interception warrant.
- (3) The persons referred to in subsection (2)(a) are -
- (a) any person to whom a warrant under this Chapter may be addressed;
 - (b) any person holding office under the Crown or employed by or for the purposes of any government department;
 - (c) any person employed by or for the purposes of the Island Police Force or Customs and Excise;
 - (d) any person providing a postal service or employed for the purposes of any business of providing such a service; and
 - (e) any person providing a public telecommunications service or employed for the purposes of any business of providing such a service.

(4) In this section “**intercepted communication**” means any communication intercepted in the course of its transmission by means of a postal service or telecommunication system.

Exceptions to section 14

15. (1) Section 14(1) shall not apply in relation to -

- (a) any proceedings for a relevant offence;
- (b) any civil proceedings under section 10(8);
- (c) any proceedings before the Tribunal; or
- (d) any proceedings which the Committee may by Order designate.

(2) Section 14(1) shall not prohibit anything done in, for the purposes of, or in connection with, so much of any legal proceedings as relates to the fairness or unfairness of a dismissal on the grounds of any conduct constituting an offence under section 1(1) or (2), 10(7) or 17 of this Law, or section 1 of the 1997 Law.

(3) Section 14(1)(a) shall not prohibit the disclosure of any of the contents of a communication if the interception of that communication was lawful by virtue of section 1(5)(c), 3 or 4.

(4) Where any disclosure is proposed to be or has been made on the grounds that it is authorised by subsection (3), section 14(1) shall not prohibit the doing of anything in, or for the purposes of, so much of any legal proceedings

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as relates to the question whether that disclosure is or was so authorised.

(5) Section 14(1)(b) shall not prohibit the doing of anything that discloses any conduct of a person for which he has been convicted of an offence under section 1(1) or (2), 10(7) or 17 of this Law, or section 1 of the 1997 Law.

(6) Nothing in section 14(1) shall prohibit any such disclosure of any information that continues to be available for disclosure as is confined to -

- (a) a disclosure to a person conducting a criminal prosecution for the purpose only of enabling that person to determine what is required of him by his duty to secure the fairness of the prosecution; or
- (b) a disclosure to the Bailiff in a case which the Bailiff has ordered the disclosure to be made to him alone.

(7) The Bailiff shall not order a disclosure under subsection (6)(b) except where he is satisfied that the exceptional circumstances of the case make the disclosure essential in the interests of justice.

- (8) Subject to subsection (9), where in any criminal proceedings -
- (a) the Bailiff does order a disclosure under subsection (6)(b), and
 - (b) in consequence of that disclosure he is of the opinion that there are exceptional circumstances requiring him to do so,

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he may direct the person conducting the prosecution to make for the purposes of the proceedings any such admission of fact as the Bailiff thinks essential in the interests of justice.

(9) Nothing in any direction under subsection (8) shall authorise or require anything to be done in contravention of section 14(1).

(10) In this section “**relevant offence**” means -

- (a) an offence under any provision of this Law;
- (b) an offence under section 1 of the 1997 Law;
- (c) an offence under section 5 of the Wireless Telegraphy Act 1949;
- (d) an offence under section 13 of the Telecommunications (Bailiwick of Guernsey) Law, 2001^e;
- (e) perjury committed in the course of any proceedings mentioned in subsection (1) or (2) of this section;
- (f) attempting or conspiring to commit, or aiding, abetting, counselling or procuring the commission of, an offence falling within any of the preceding paragraphs; and

^e Order in Council No. XIV of 2001.

- (g) contempt of court committed in the course of, or in relation to, any proceedings mentioned in subsection (1) or (2) of this section.

Offence for unauthorised disclosures

16. (1) Where an interception warrant has been issued or renewed, it shall be the duty of every person falling within subsection (2) to keep secret all the matters mentioned in subsection (3).

- (2) The persons falling within this subsection are -
 - (a) the persons specified in section 6(1);
 - (b) every person holding office under the Crown or employed by or for the purposes of any government department;
 - (c) every person employed by or for the purposes of the Island Police Force or Customs and Excise;
 - (d) persons providing postal services or employed for the purposes of any business of providing such a service;
 - (e) persons providing public telecommunications services or employed for the purposes of any business of providing such a service;
 - (f) persons having control of the whole or any part of a telecommunications system located wholly or partly in the Bailiwick.

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- (3) Those matters are -
- (a) the existence and contents of the interception warrant and of any section 7(4) certificate in relation to the warrant;
 - (b) the details of the issue of the warrant and of any renewal or modification of the warrant or of any such certificate;
 - (c) the existence and contents of any requirement to provide assistance with giving effect to the warrant;
 - (d) the steps taken in pursuance of the warrant or of any such requirement; and
 - (e) everything in the intercepted material, together with any related communications data.

(4) A person who makes a disclosure to another of anything that he is required to keep secret under this section shall be guilty of an offence and liable -

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

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(5) In proceedings against any person for an offence under this section in respect of any disclosure, it shall be a defence for that person to show that he could not reasonably have been expected, after first becoming aware of the matter disclosed, to take steps to prevent the disclosure.

(6) In proceedings against any person for an offence under this section in respect of any disclosure, it shall be a defence for that person to show that -

- (a) the disclosure was made by or to an Advocate or other professional legal adviser in connection with the giving, by the adviser to any client of his, of advice about the effect of provisions of this Chapter; and
- (b) the person to whom or, as the case may be, by whom it was made was the client or a representative of the client.

(7) In proceedings against any person for an offence under this section in respect of any disclosure, it shall be a defence for that person to show that the disclosure was made by an Advocate or other professional legal adviser -

- (a) in contemplation of, or in connection with, any legal proceedings; and
- (b) for the purposes of those proceedings.

(8) Neither subsection (6) nor subsection (7) applies in the case of a disclosure made with a view to furthering any criminal purpose.

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(9) In proceedings against any person for an offence under this section in respect of any disclosure, it shall be a defence for that person to show that the disclosure was confined to a disclosure made to the Commissioner or authorised -

- (a) by the Commissioner;
- (b) by the warrant or the person to whom the warrant is or was addressed;
- (c) by the terms of the requirement to provide assistance;
or
- (d) by section 10(9).

CHAPTER II

ACQUISITION AND DISCLOSURE OF COMMUNICATIONS DATA

Lawful acquisition and disclosure of communications data

17. (1) This Chapter applies to -

- (a) any conduct in relation to a postal service or telecommunication system for obtaining communications data, other than conduct consisting in the interception of communications in the course of their transmission by means of such a service or system; and

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(b) the disclosure to any person of communications data.

(2) Conduct to which this Chapter applies shall be lawful for all purposes if -

(a) it is conduct in which any person is authorised or required to engage by an authorisation or notice granted or given under this Chapter; and

(b) the conduct is in accordance with, or in pursuance of, the authorisation or requirement.

(3) A person shall not be subject to any civil liability in respect of any conduct of his which -

(a) is incidental to any conduct that is lawful by virtue of subsection (2); and

(b) is not itself conduct for which an authorisation or warrant is capable of being granted under any enactment and which might reasonably have been expected to have been sought in the case in question.

Obtaining and disclosing communications data

18. (1) This section applies where a person designated for the purposes of this Chapter believes that it is necessary on grounds falling within subsection (2) to obtain any communications data.

(2) It is necessary on grounds falling within this subsection to obtain communications data if it is necessary -

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- (a) in the interests of national security;
- (b) for the purpose of preventing or detecting crime or of preventing disorder;
- (c) in the interests of the economic well-being of the Bailiwick;
- (d) in the interests of public safety;
- (e) for the purpose of protecting public health;
- (f) for the purpose of assessing or collecting any tax, duty, levy or other imposition, contribution or charge payable to a government department;
- (g) for the purpose, in an emergency, of preventing death or injury or any damage to a person's physical or mental health, or of mitigating any injury or damage to a person's physical or mental health; or
- (h) for any purpose (not falling within paragraphs (a) to (g)) which is specified for the purposes of this subsection by the Committee.

(3) Subject to subsection (5), the designated person may grant an authorisation for persons holding offices, ranks or positions with the same relevant public authority as the designated person to engage in any conduct to which this Chapter applies.

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(4) Subject to subsection (5), where it appears to the designated person that a postal or telecommunications operator is or may be in possession of, or be capable of obtaining, any communications data, the designated person may, by notice to the postal or telecommunications operator, require the operator -

- (a) if the operator is not already in possession of the data, to obtain the data; and
- (b) in any case, to disclose all of the data in his possession or subsequently obtained by him.

(5) The designated person shall not grant an authorisation under subsection (3), or give a notice under subsection (4), unless he believes that obtaining the data in question by the conduct authorised or required by the authorisation or notice is proportionate to what is sought to be achieved by so obtaining the data.

(6) It shall be the duty of the postal or telecommunications operator to comply with the requirements of any notice given to him under subsection (4).

(7) A person who is under a duty by virtue of subsection (6) shall not be required to do anything in pursuance of that duty which it is not reasonably practicable for him to do.

(8) The duty imposed by subsection (6) shall be enforceable by civil proceedings by Her Majesty's Procureur for an injunction, or for any other appropriate relief.

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- (9) A notice under subsection (4) may require -
- (a) the person to whom the notice is given, and
 - (b) every other person who becomes aware of it or of its contents,

to keep secret the giving of the notice, its contents and the things done in pursuance of it.

(10) A person who makes a disclosure to any other person of anything that he is required by a notice under subsection (4) to keep secret shall be guilty of an offence and liable -

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

(11) In proceedings against any person for an offence under this section in respect of any disclosure, it shall be a defence for that person to show that he could not reasonably have been expected, after being given the notice or (as the case may be) becoming aware of it or of its contents, to take steps to prevent the disclosure.

(12) In proceedings against any person for an offence under this section in respect of any disclosure, it shall be a defence for that person to show that -

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- (a) the disclosure was made by or to an Advocate or other professional legal adviser in connection with the giving, by the Advocate or adviser to any client of his, of advice about the effect of provisions of this Chapter; and
- (b) the person to whom or, as the case may be, by whom it was made was the client or a representative of the client.

(13) In proceedings against any person for an offence under this section in respect of any disclosure, it shall be a defence for that person to show that the disclosure was made by an Advocate or other professional legal adviser -

- (a) in contemplation of, or in connection with, any legal proceedings; and
- (b) for the purposes of those proceedings.

(14) Neither subsection (12) nor subsection (13) applies in the case of a disclosure made with a view to furthering any criminal purpose.

(15) In proceedings against any person for an offence under this section in respect of any disclosure, it shall be a defence for that person to show that the disclosure was confined to a disclosure made to the Commissioner or authorised -

- (a) by the Commissioner;

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- (b) by the terms of the notice;
- (c) by or on behalf of the person who gave the notice; or
- (d) otherwise authorised under this Law or any other enactment.

(16) In proceedings for an offence under this section against a person other than the person to whom the notice was given, it shall be a defence for the person against whom the proceedings are brought to show that he neither knew nor had reasonable grounds for suspecting that the notice contained a requirement to keep secret what was disclosed.

Form and duration of authorisations and notices

19. (1) An authorisation under section 18(3) -

- (a) must be granted in writing or (if not in writing) in a manner that produces a record of its having been granted;
- (b) must describe the conduct to which this Chapter applies that is authorised and the communications data in relation to which it is authorised;
- (c) must specify the matters falling within section 18(2) by reference to which it is granted; and
- (d) must specify the office, rank or position held by the person granting the authorisation.

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(2) A notice under section 18(4) requiring communications data to be disclosed or to be obtained and disclosed -

- (a) must be given in writing or (if not in writing) must be given in a manner that produces a record of its having been given;
- (b) must describe the communications data to be obtained or disclosed under the notice;
- (c) must specify the matters falling within section 18(2) by reference to which the notice is given;
- (d) must specify the office, rank or position held by the person giving it; and
- (e) must specify the manner in which any disclosure required by the notice is to be made.

(3) A notice under section 18(4) shall not require the disclosure of data to any person other than -

- (a) the person giving the notice; or
- (b) such other person as may be specified in or otherwise identified by, on in accordance with, the provisions of the notice;

but the provisions of the notice shall not specify or otherwise identify a person for the purposes of paragraph (b) unless he holds an office, rank or position with the

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same relevant public authority as the person giving the notice.

(4) An authorisation under section 18(3) or notice under section 18(4) -

- (a) shall not authorise or require any data to be obtained after the end of the period of one month beginning with the date on which the authorisation is granted or the notice given; and
- (b) in the case of a notice, shall not authorise or require any disclosure after the end of that period of any data not in the possession of, or obtained by, the postal or telecommunications operator at a time during that period.

(5) An authorisation under section 18(3) or notice under section 18(4) may be renewed at any time before the end of the period of one month applying (in accordance with subsection (4) or subsection (7) to that authorisation or notice.

(6) A renewal of an authorisation under section 18(3) or of a notice under section 18(4) shall be by the grant or giving, in accordance with this section, of a further authorisation or notice.

(7) Subsection (4) shall have effect in relation to a renewed authorisation or renewal notice as if the period of one month mentioned in that subsection did not begin until the end of the period of one month applicable to the authorisation or notice that is current at the time of the renewal.

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(8) Where a person who has given a notice under subsection (4) of section 18 is satisfied -

- (a) that it is no longer necessary on grounds falling within subsection (2) of that section for the requirements of the notice to be complied with, or
- (b) that the conduct required by the notice is no longer proportionate to what is sought to be achieved by obtaining communications data to which the notice relates,

he shall cancel the notice.

(9) The Committee may by regulations provide for the person by whom any duty imposed by subsection (8) is to be performed in a case in which it would otherwise fall on a person who is no longer available to perform it; and regulations under this subsection may provide for the person on whom the duty is to fall to be a person appointed in accordance with the regulations.

Persons who may give authorisations or notices under Chapter II

20. (1) Subject to subsection (2), the persons designated for the purposes of this Chapter and the relevant public authorities in relation to which they are designated are -

Designated Person

Relevant Public Authority

(a) Chief Officer of the Island Police Force

Island Police Force

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- (b) Chief Officer of Customs and Excise Customs and Excise
- (c) HM Procureur
- (i) any public authority within the Bailiwick not otherwise specifically mentioned in this subsection;
 - (ii) any of the Intelligence Services.

(2) The Committee may by regulation -

- (a) amend subsection (1);
- (b) provide that for the purposes of this Chapter the designated person may authorise to act on his behalf such individuals holding such offices, ranks or positions with the same relevant public authority as are prescribed;
- (c) impose restrictions -
 - (i) on the authorisations and notices under this Chapter that may be granted or given by any individual holding an office, rank or position with a specified public authority; and
 - (ii) on the circumstances in which, or the purposes for which, such authorisations may be granted

or notices given by any such individual.

PART II
SURVEILLANCE AND COVERT INVESTIGATIONS

Chapter I
SURVEILLANCE AND COVERT HUMAN INTELLIGENCE SOURCES

Introductory

Conduct to which Chapter I applies

- 21.** (1) This Chapter applies to the following conduct -
- (a) directed surveillance;
 - (b) intrusive surveillance; and
 - (c) the conduct and use of covert human intelligence sources.
- (2) Subject to subsection (6), surveillance is directed for the purposes of this Chapter if it is covert but not intrusive and is undertaken -
- (a) for the purposes of a specific investigation or a specific operation;
 - (b) in such a manner as is likely to result in the obtaining of private information about a person (whether or not one specifically identified for the purposes of the

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investigation or operation); and

- (c) otherwise than by way of an immediate response to events or circumstances the nature of which is such that it would not be reasonably practicable for an authorisation under this Chapter to be sought for the carrying out of the surveillance.

(3) Subject to subsections (4) and (6), surveillance is intrusive for the purposes of this Chapter if, and only if, it is covert surveillance that -

- (a) is carried out in relation to anything taking place on any residential premises or in any private vehicle; and
- (b) involves the presence of an individual on the premises or in the vehicle or is carried out by means of a surveillance device.

(4) For the purposes of this Chapter surveillance is not intrusive to the extent that -

- (a) it is carried out by means only of a surveillance device designed or adapted principally for the purpose of providing information about the location of a vehicle; or
- (b) it is surveillance consisting in any such interception of a communication as falls within section 69(3).

(5) For the purposes of this Chapter surveillance which -

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- (a) is carried out by means of a surveillance device in relation to anything taking place on any residential premises or in any private vehicle, but
- (b) is carried out without that device being present on the premises or in the vehicle,

is not intrusive unless the device is such that it consistently provides information of the same quality and detail as might be expected to be obtained from a device actually present on the premises or in the vehicle.

- (6) For the purposes of this Chapter surveillance which -
 - (a) is carried out by means of apparatus designed or adapted for the purpose of detecting the installation or use in any residential or other premises of a television receiver (within the meaning of section 1 of the Wireless Telegraphy Act 1949), and
 - (b) is carried out from outside those premises exclusively for that purpose,

is neither directed nor intrusive.

- (7) In this Chapter-
 - (a) references to the conduct of a covert human intelligence source are references to any conduct of such a source which falls within any of paragraphs (a)

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to (c) of subsection (8), or is incidental to anything falling within any of those paragraphs; and

- (b) references to the use of a covert human intelligence source are references to inducing, asking or assisting a person to engage in the conduct of such a source, or to obtain information by means of the conduct of such a source.

(8) For the purposes of this Chapter a person is a covert human intelligence source if -

- (a) he establishes or maintains a personal or other relationship with a person for the covert purpose of facilitating the doing of anything falling within paragraph (b) or (c);
- (b) he covertly uses such a relationship to obtain information or to provide access to any information to another person; or
- (c) he covertly discloses information obtained by the use of such a relationship, or as a consequence of the existence of such a relationship.

(9) For the purposes of this section -

- (a) surveillance is covert if, and only if, it is carried out in a manner that is calculated to ensure that persons who are subject to the surveillance are unaware that it is or

may be taking place;

- (b) a purpose is covert, in relation to the establishment or maintenance of a personal or other relationship, if and only if, the relationship is conducted in a manner that is calculated to ensure that one of the parties to the relationship is unaware of the purpose; and
- (c) a relationship is used covertly, and information obtained as mentioned in subsection (8)(c) is disclosed covertly, if and only if it is used or, as the case may be, disclosed in a manner that is calculated to ensure that one of the parties to the relationship is unaware of the use or disclosure in question.

(10) In this section “**private information**”, in relation to a person, includes any information relating to his private or family life.

(11) References in this section, in relation to a vehicle, to the presence of a surveillance device in the vehicle include references to its being located on or under the vehicle and also include references to its being attached to it.

Authorisation of surveillance and human intelligence sources

Lawful surveillance etc.

22. (1) Conduct to which this Chapter applies shall be lawful for all purposes if -

- (a) an authorisation under this Chapter confers an

entitlement to engage in that conduct on the person whose conduct it is; and

(b) his conduct is in accordance with the authorisation.

(2) A person shall not be subject to any civil liability in respect of any conduct of his which -

(a) is incidental to any conduct that is lawful by virtue of subsection (1); and

(b) is not itself conduct an authorisation or warrant for which is capable of being granted under this Law or under section 5 of the Intelligence Services Act 1994^f and might reasonably have been expected to have been sought in the case in question.

(3) The conduct that may be authorised under this Chapter includes conduct outside the Bailiwick.

Authorisation of directed surveillance

23. (1) Subject to the following provisions of this Part, the persons designated for the purposes of this section shall each have power to grant authorisations for the carrying out of directed surveillance.

(2) A person shall not grant an authorisation for the carrying out of directed surveillance unless he believes -

^f An Act of Parliament (1994, Ch.13), as extended to the Bailiwick by the Intelligence Services Act 1994 (Channel Islands) Order, 1994.

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- (a) that the authorisation is necessary on grounds falling within subsection (3); and
- (b) that the authorised surveillance is proportionate to what is sought to be achieved by carrying it out.

(3) An authorisation is necessary on grounds falling within this subsection if it is necessary -

- (a) in the interests of national security;
- (b) for the purpose of preventing or detecting crime or of preventing disorder;
- (c) in the interests of the economic well-being of the Bailiwick;
- (d) in the interests of public safety;
- (e) for the purpose of protecting public health;
- (f) for the purpose of assessing or collecting any tax, duty, levy or other imposition, contribution or charge payable to a government department; or
- (g) for any purpose (not falling within paragraphs (a) to (f)) which is specified for the purposes of this subsection by regulations made by the Committee.

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(4) The conduct that is authorised by an authorisation for the carrying out of directed surveillance is any conduct that -

- (a) consists in the carrying out of directed surveillance of any such description as is specified in the authorisation; and
- (b) is carried out in the circumstances described in the authorisation and for the purposes of the investigation or operation specified or described in the authorisation.

Authorisation of covert human intelligence sources

24. (1) Subject to the following provisions of this Chapter, the persons designated for the purposes of this section shall each have power to grant authorisations for the conduct or the use of a covert human intelligence source.

(2) A person shall not grant an authorisation for the conduct or the use of a covert human intelligence source unless he believes -

- (a) that the authorisation is necessary on grounds falling within subsection (3);
- (b) that the authorised conduct or use is proportionate to what is sought to be achieved by that conduct or use; and
- (c) that arrangements exist for the source's case that satisfy the requirements of subsection (5) and such other requirements as may be imposed by regulations

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made by the Committee.

(3) An authorisation is necessary on grounds falling within this subsection if it is necessary -

- (a) in the interests of national security;
- (b) for the purpose of preventing or detecting crime or of preventing disorder;
- (c) in the interests of the economic well-being of the Bailiwick;
- (d) in the interests of public safety;
- (e) for the purpose of protecting public health;
- (f) for the purpose of assessing or collecting any tax, duty, levy or other imposition, contribution or charge payable to a government department; or
- (g) for any purpose (not falling within paragraphs (a) to (f)) which is specified for the purposes of this subsection by regulations made by the Committee.

(4) The conduct that is authorised by an authorisation for the conduct or the use of a covert human intelligence source is any conduct that -

- (a) is comprised in any such activities involving conduct of a covert human intelligence source, or the use of a

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covert human intelligence source, as are specified or described in the authorisation;

- (b) consists in conduct by or in relation to the person who is so specified or described as the person to whose actions as a covert human intelligence source the authorisation relates; and
- (c) is carried out for the purposes of, or in connection with, the investigation or operation so specified or described.

(5) For the purposes of this Chapter there are arrangements for the source's case that satisfy the requirements of this subsection if such arrangements are in force as are necessary for ensuring -

- (a) that there will at all times be a person holding an office, rank or position with the relevant investigating authority who will have day-to-day responsibility for dealing with the source on behalf of that authority, and for the source's security and welfare;
- (b) that there will at all times be another person holding an office, rank or position with the relevant investigating authority who will have general oversight of the use made of the source;
- (c) that there will at all times be a person holding an office, rank or position with the relevant investigating authority who will have responsibility for maintaining

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a record of the use made of the source;

(d) that the records relating to the source that are maintained by the relevant investigating authority will always contain particulars of all such matters (if any) as may be specified for the purposes of this paragraph in regulations made by the Committee; and

(e) that records maintained by the relevant investigating authority that disclose the identity of the source will not be available to persons except to the extent that there is a need for access to them to be made available to those persons.

(6) The Committee may by regulation -

(a) prohibit the authorisation under this section of any such conduct or uses of covert human intelligence sources as may be described in the regulations; and

(b) impose requirements, in addition to those provided for by subsection (2), that must be satisfied before an authorisation is granted under this section for any such conduct or uses of covert human intelligence sources as may be so described.

(7) In this section “**relevant investigating authority**”, in relation to an authorisation for the conduct or the use of an individual as a covert human intelligence source, means (subject to subsection (8)) the public authority for whose benefit the activities of that individual as such a source are to take place.

(8) In the case of any authorisation for the conduct or the use of a covert human intelligence source whose activities are to be for the benefit of more than one public authority, the references in subsection (5) to the relevant investigating authority are references to one of them (whether or not the same one in the case of each reference).

Persons entitled to grant authorisation under sections 23 and 24

25. (1) Subject to subsection (3), the persons designated for the purposes of sections 23 and 24 are the individuals holding such offices, ranks or positions with such applicable public authorities as are prescribed for the purposes of this subsection by regulations made by the Committee under this section.

(2) For the purposes of the grant of an authorisation that combines -

- (a) an authorisation under section 23 or 24; and
- (b) an authorisation by Her Majesty's Procureur for the carrying out of intrusive surveillance;

Her Majesty's Procureur himself shall be a person designated for the purposes of that section.

- (3) Regulations under this section may impose restrictions -
 - (a) on the authorisation under sections 23 and 24 that may be granted by any individual holding an office, rank or position with a specified public authority; and

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(b) on the circumstances in which, or the purposes for which, such authorisations may be granted by any such individual.

(4) A public authority is an applicable public authority for the purposes of this section if it is specified in Schedule 1.

(5) Her Majesty's Procureur shall be a person designated for the purposes of the grant of an authorisation under section 23 or 24 in respect of any public authority in the Bailiwick not specified in Schedule 1.

(6) Regulations under this section may amend Schedule 1 by -

(a) adding a public authority to that Schedule;

(b) removing a public authority from that Schedule;

(c) making any change consequential on any change in the name or any transfer of functions of a public authority specified in that Schedule.

Authorisation of intrusive surveillance

26. (1) Subject to the following provisions of this Chapter, Her Majesty's Procureur and each of the senior authorising officers shall have power to grant authorisation for the carrying out of intrusive surveillance.

(2) Neither Her Majesty's Procureur nor any senior authorising officer shall grant an authorisation for the carrying out of intrusive surveillance unless he believes -

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- (a) that the authorisation is necessary on grounds falling within subsection (3); and
- (b) that the authorised surveillance is proportionate to what is sought to be achieved by carrying it out.

(3) Subject to the following provisions of this section, an authorisation is necessary on grounds falling within this subsection if it is necessary

-

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

(4) The matters to be taken into account in considering whether the requirements of subsection (2) are satisfied in the case of any authorisation shall include whether the information which it is thought necessary to obtain by the authorised conduct could reasonably be obtained by other means.

(5) The conduct that is authorised by an authorisation for the carrying out of intrusive surveillance is any conduct that -

- (a) consists in the carrying out of intrusive surveillance of any such description as is specified in the authorisation;
- (b) is carried out in relation to the residential premises

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specified or described in the authorisation or in relation to the private vehicle so specified or described; and

(c) is carried out for the purposes of, or in connection with, the investigation or operation so specified or described.

(6) For the purposes of this section the senior authorising officers are -

(a) the Chief Officer of the Island Police Force; and

(b) the Chief Officer of Customs and Excise.

Police and Customs authorisations

Rules for grant of authorisations

27. (1) A person who is a designated person for the purposes of section 23 or 24 by reference to his rank with the Island Police Force shall not grant an authorisation under that section except on an application made by a member of the same force.

(2) A person who is designated for the purposes of section 23 or 24 by reference to his position with Customs and Excise shall not grant an authorisation under that section except on an application made by a customs officer.

(3) A single authorisation may combine both -

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- (a) an authorisation granted under Chapter I of this Part of this Law by, or on the application of, an individual who is a member of the Island Police Force or who is a customs officer; and
- (b) an authorisation under Chapter II of this Part;

but the provisions of this Law that are applicable in the case of each of the authorisations shall apply separately in relation to the part of the combined authorisation to which they are applicable.

Grant of authorisations for intrusive surveillance

28. (1) For the purposes of an authorisation for the carrying out of intrusive surveillance where the application is one made by a member of the Island Police Force or by a customs officer, the Committee may by regulation -

- (a) provide that either of the senior authorising officers specified in section 26(6) may authorise to act on his behalf such individuals holding such offices, ranks or positions with the same public authority as are prescribed;
- (b) impose restrictions on the authorisation under section 26 that may be granted by any such individual and on the circumstances in which, or the purposes for which, such authorisations may be granted by any such individual.

(2) A person who considers an application for an authorisation to carry out intrusive surveillance under regulations made under subsection (1) shall

have the same power to grant an authorisation as the person for whom he is entitled to act.

Notification of authorisations for intrusive surveillance

29. (1) Where a person grants or cancels a police or customs authorisation for the carrying out of intrusive surveillance, he shall give notice that he has done so to Her Majesty's Procureur.

(2) A notice given for the purposes of subsection (1) -

- (a) must be given in writing as soon as reasonably practicable after the grant or, as the case may be, cancellation of the authorisation to which it relates;
- (b) must be given in accordance with any such arrangements made for the purposes of this paragraph by Her Majesty's Procureur as are for the time being in force; and
- (c) must specify such matters as the Committee may by regulation prescribe.

(3) A notice under this section of the grant of an authorisation shall, as the case may be, either -

- (a) state that the approval of Her Majesty's Procureur is required by section 30 before the grant of the authorisation will take effect; or
- (b) state that the case is one of urgency and set out the

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grounds on which the case is believed to be one of urgency.

(4) Where a notice for the purposes of subsection (1) of the grant of an authorisation has been received by Her Majesty's Procureur, he shall, as soon as practicable -

- (a) scrutinise the authorisation; and
- (b) in a case where notice has been given in accordance with subsection (3)(a), decide whether or not to approve the authorisation.

(5) Any notice that is required by any provision of this section to be given in writing may be given, instead, by being transmitted by electronic means.

(6) In this section references to a police or customs authorisation are references to an authorisation granted by -

- (a) the Chief Officer of the Island Police Force,
- (b) the Chief Officer of Customs and Excise, or
- (c) a person who by virtue of section 28 is entitled to act for either of the persons falling within paragraph (a) or (b).

Approval required for police and customs authorisations to take effect

30. (1) This section applies where an authorisation for the carrying

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out of intrusive surveillance has been granted on the application of a member of the Island Police Force or a customs officer.

(2) Subject to subsection (3), the authorisation shall not take effect until such time (if any) as -

- (a) the grant of the authorisation has been approved by Her Majesty's Procureur; and
- (b) written notice of Her Majesty's Procureur's decision to approve the grant of the authorisation has been given, in accordance with subsection (4), to the person who granted the authorisation.

(3) Where the person who grants the authorisation -

- (a) believes that the case is one of urgency, and
- (b) gives notice in accordance with section 29(3)(b),

subsection (2) shall not apply to the authorisation, and the authorisation shall have effect from the time of its grant.

(4) Where subsection (2) applies to the authorisation -

- (a) Her Majesty's Procureur shall give his approval under this section to the authorisation if, and only if, he is satisfied that there are reasonable grounds for believing that the requirements of section 26(2)(a) and (b) are satisfied in the case of the authorisation; and

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(b) Her Majesty's Procureur shall, as soon as reasonably practicable after making a decision as to whether or not the authorisation should be approved, give written notice of his decision to the person who granted the authorisation.

(5) If Her Majesty's Procureur decides not to approve an authorisation to which subsection (2) applies, he shall make a report of his findings to the most senior relevant person.

(6) In this section "the most senior relevant person" means -

(a) where the authorisation was granted by either the Chief Officer of the Island Police Force or the Chief Officer of Customs and Excise, that officer;

(b) where the authorisation was granted by a person entitled to act for either of the Chief Officers under section 28, the appropriate Chief Officer.

(7) Any notice that is required by any provision of this section to be given in writing may be given, instead, by being transmitted by electronic means.

Quashing of police and customs authorisations etc.

31. (1) This section applies where an authorisation for the carrying out of intrusive surveillance has been granted on the application of an officer of the Island Police Force or a customs officer.

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(2) Where Her Majesty's Procureur is at any time satisfied that, at the time when the authorisation was granted or at any time when it was renewed, there were no reasonable grounds for believing that the requirements of section 26(2)(a) and (b) were satisfied, he may quash the authorisation with effect, as he thinks fit, from the time of the grant of the authorisation or from the time of any renewal of the authorisation.

(3) If Her Majesty's Procureur is satisfied at any time while the authorisation is in force that there are no longer any reasonable grounds for believing that the requirements of section 26(2)(a) and (b) are satisfied in relation to the authorisation he may cancel the authorisation with effect from such time as appears to him to be the time from which those requirements ceased to be so satisfied.

(4) Where, in the case of any authorisation of which notice has been given in accordance with section 29(3)(b) Her Majesty's Procureur is at any time satisfied that, at the time of the grant or renewal of the authorisation to which that notice related, there were no reasonable grounds for believing that the case was one of urgency, he may quash the authorisation with effect, as he thinks fit, from the time of the grant of the authorisation or from the time of any renewal of the authorisation.

(5) Subject to subsection (7), where Her Majesty's Procureur quashes an authorisation under this section, he may order the destruction of any records relating wholly or partly to information obtained by the authorised conduct after the time from which his decision takes effect.

(6) Subject to subsection (7), where -

(a) an authorisation has ceased to have effect (otherwise

than by virtue of subsection (2) or (4)), and

- (b) Her Majesty's Procureur is satisfied that there was a time while the authorisation was in force when there were no reasonable grounds for believing that the requirements of section 26(2)(a) and (b) continued to be satisfied in relation to the authorisation,

he may order the destruction of any records relating, wholly or partly, to information obtained at such a time by the authorised conduct.

(7) No order shall be made under this section for the destruction of any records required for pending criminal or civil proceedings.

(8) Where Her Majesty's Procureur exercises a power conferred by this section, he shall, as soon as reasonably practicable, make a report of his exercise of that power, and of his reasons for doing so, to the most senior relevant person (within the meaning of section 30).

Information to be provided to Her Majesty's Procureur

32. It shall be the duty of every member of the Island Police Force and every customs officer to comply with any request of Her Majesty's Procureur for documents or information required by him for the purpose of enabling him to carry out his functions under sections 29, 30 and 31.

Other authorisations

Authorisation by Her Majesty's Procureur

33. (1) Her Majesty's Procureur shall not grant an authorisation for the carrying out of intrusive surveillance except on an application made by -

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- (a) a member of any of the intelligence services;
- (b) an official of the Ministry of Defence;
- (c) a member of Her Majesty's forces;
- (d) an individual holding an office, rank or position with any such public authority as may be designated for the purposes of this section as an authority whose activities may require the carrying out of intrusive surveillance.

(2) Section 26 shall have effect in relation to the grant of an authorisation by Her Majesty's Procurer on the application of an official of the Ministry of Defence, or of a member of Her Majesty's forces, as if the only matters mentioned in subsection (3) of that section were -

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

(3) The designation of any public authority for the purposes of this section shall be by regulation made by the Committee.

(4) The Committee may by regulation provide, in relation to any public authority, that an application for an authorisation for the carrying out of intrusive surveillance may be made by an individual holding an office, rank or position with that authority only where his office, rank or position is one prescribed by the regulations.

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- (5) The Committee may by regulation impose restrictions -
- (a) on the authorisations for the carrying out of intrusive surveillance that may be granted on the application of an individual holding an office, rank or position with any public authority designated for the purposes of this section; and
 - (b) on the circumstances in which, or the purposes for which, such authorisations may be granted on such an application.

(6) References in this section to a member of Her Majesty's forces do not include references to any member of Her Majesty's forces who is a member of a police force by virtue of his service with the Royal Navy Regulating Branch, the Royal Military Police or the Royal Air Force Police.

Grant, renewal and duration of authorisations

General rules about grant, renewal and duration

34. (1) An authorisation under this Chapter -
- (a) may be granted or renewed orally in any urgent case in which the entitlement to act of the person granting or renewing it is not confined to urgent cases; and
 - (b) in any other case, must be in writing.
- (2) A single authorisation may combine two or more different

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authorisations under this Part; but the provisions of this Law that are applicable in the case of each of the authorisations shall apply separately in relation to the part of the combined authorisation to which they are applicable.

(3) Subject to subsections (4) and (8), an authorisation under this Chapter shall cease to have effect at the end of the following period -

(a) in the case of an authorisation which -

(i) has not been renewed and was granted either orally or by a person whose entitlement to act is confined to urgent cases, or

(ii) was last renewed either orally or by such a person,

the period of seventy-two hours beginning with the time when the grant of the authorisation or, as the case may be, its latest renewal takes effect;

(b) in a case not falling within paragraph (a) in which the authorisation is for the conduct or the use of a covert human intelligence source, the period of twelve months beginning with the day on which the grant of the authorisation or, as the case may be, its latest renewal takes effect; and

(c) in any case not falling within paragraph (a) or (b), the period of three months beginning with the day on which the grant of the authorisation or, as the case

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may be, its latest renewal takes effect.

(4) Subject to subsection (6), an authorisation under this Chapter may be renewed, at any time before the time at which it ceases to have effect, by any person who would be entitled to grant a new authorisation in the same terms.

(5) Sections 23 to 33 shall have effect in relation to the renewal of an authorisation under this Chapter as if references to the grant of an authorisation included references to its renewal.

(6) A person shall not renew an authorisation for the conduct or the use of a covert human intelligence source, unless he -

- (a) is satisfied that a review has been carried out of the matters mentioned in subsection (7); and
- (b) has, for the purpose of deciding whether he should renew the authorisation, considered the results of that review.

(7) The matters mentioned in subsection (6) are -

- (a) the use made of the source in the period since the grant or, as the case may be, latest renewal of the authorisation; and
- (b) the tasks given to the source during that period and the information obtained from the conduct or the use of the source.

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(8) The Committee may by regulation provide in relation to authorisations of such descriptions as may be specified in the regulations that subsection (3) is to have effect as if the period at the end of which an authorisation of a description so specified is to cease to have effect were such period shorter than that provided for by that subsection as may be fixed by or determined in accordance with those regulations.

(9) References in this section to the time at which, or the day on which the grant or renewal of an authorisation takes effect are references -

- (a) in the case of the grant of an authorisation to which paragraph (c) does not apply, to the time at which or, as the case may be, the day on which the authorisation is granted;
- (b) in the case of the renewal of an authorisation to which paragraph (c) does not apply, to the time at which or, as the case may be, the day on which the authorisation would have ceased to have effect but for the renewal; and
- (c) in the case of any grant or renewal that takes effect under subsection (2) of section 30 at a time or on a day later than that given by paragraph (a) or (b), to the time at which or, as the case may be, the day on which the grant or renewal takes effect in accordance with that subsection.

(10) In relation to any authorisation granted by a member of any of the intelligence services, and in relation to any authorisation granted by Her

Majesty's Procureur on the application of a member of any of the intelligence services, this section has effect subject to the provisions of section 35.

Special rules for intelligence services authorisations

35. (1) An authorisation under section 33 for the carrying out of intrusive surveillance -

- (a) shall not be issued on the application of a member of any of the intelligence services, and
- (b) if so issued shall not be renewed,

except under the hand of Her Majesty's Procureur.

(2) Subject to subsection (4), where any authorisation for the carrying out of intrusive surveillance which is issued or was last renewed on the application of a member of any of the intelligence services, the authorisation (unless renewed or, as the case may be, renewed again) shall cease to have effect at the following time, instead of at the time provided for by section 34(3) namely -

- (a) in the case of an authorisation that has not been renewed, at the end of the period of six months beginning with the day on which it was issued; and
- (b) in any other case, at the end of the period of six months beginning with the day on which it would have ceased to have effect if not renewed again.

(3) Subject to subsection (4), where -

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- (a) an authorisation for the carrying out of directed surveillance is granted by a member of any of the intelligence services, and
- (b) the authorisation is renewed by an instrument endorsed under the hand of the person renewing the authorisation with a statement that the renewal is believed to be necessary on grounds falling within section 26(3)(a) or (c),

the authorisation (unless renewed again) shall cease to have effect at the end of the period of six months beginning with the day on which it would have ceased to have effect but for the renewal, instead of at the time provided for by section 34(3).

(4) The Committee may by regulation provide in relation to authorisations of such descriptions as may be specified in the regulations that subsection (2) or (3) is to have effect as if the period at the end of which an authorisation of a description so specified is to cease to have effect were such period shorter than that provided for by that subsection as may be fixed by or determined in accordance with those regulations.

(5) Notwithstanding anything in section 34(2), in a case in which there is a combined warrant containing both -

- (a) an authorisation for the carrying out of intrusive surveillance, and
- (b) an authorisation for the carrying out of directed surveillance,

the reference in subsection (2) of this section to an authorisation for the carrying out of intrusive surveillance is a reference to the warrant so far as it confers both authorisations.

Cancellation of authorisations

36. (1) The person who granted or, as the case may be, last renewed an authorisation under this Chapter shall cancel it if -

- (a) he is satisfied that the authorisation is one in relation to which the requirements of section 23(2)(a) and (b), 24(2)(a) and (b) or, as the case may be, 26(2)(a) and (b) are no longer satisfied; or
- (b) in the case of an authorisation under section 24, he is satisfied that arrangements for the source's case that satisfy the requirements mentioned in subsection (2)(c) of that section no longer exist.

(2) Where an authorisation under this Chapter was granted or, as the case may be, last renewed -

- (a) by a person entitled to act for any other person, or
- (b) by the deputy of any other person,

that other person shall cancel the authorisation if he is satisfied as to either of the matters mentioned in subsection (1).

(3) Where an authorisation under this Chapter was granted or, as the case may be, last renewed by a person whose deputy had power to grant it, that

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deputy shall cancel the authorisation if he is satisfied as to either of the matters mentioned in subsection (1)

(4) The Committee may by regulations provide for the person by whom any duty imposed by this section is to be performed in a case in which it would otherwise fall on a person who is no longer available to perform it.

(5) Regulations under subsection (4) may provide for the person on whom the duty is to fall to be a person appointed in accordance with the regulations.

Supplemental provision for Chapter I

Power to extend or modify authorisation provisions

37. The Committee may by regulation do one or both of the following -

- (a) apply this Chapter, with such modifications as it thinks fit, to any such surveillance that is neither directed nor intrusive as may be described in the regulations;
- (b) provide for any description of directed surveillance to be treated for the purposes of this Chapter as intrusive surveillance.

Notification of approvals and authorisations

38. Her Majesty's Procureur shall from time to time and, in any event, at least every twelve months, notify the Commissioner in writing of approvals and authorisations given, renewed or cancelled by him under the provisions of this Chapter.

Chapter II

AUTHORISATION OF ACTIONS IN RESPECT OF PROPERTY

Entry on or interference with property

39. No entry on or interference with property or with wireless telegraphy shall be unlawful if it is authorised by an authorisation having effect under this Chapter.

Authorisations to interfere with property etc

40. (1) Where subsection (2) applies, Her Majesty's Procureur may authorise -

- (a) the taking of such action in respect of such property as he may specify; or
- (b) the taking of such action as he may specify, in respect of wireless telegraphy.

(2) This subsection applies where Her Majesty's Procureur believes -

- (a) that it is necessary for the action specified to be taken for the purpose of preventing or detecting serious crime or in the interests of national security; and
- (b) that the taking of the action is proportionate to what the action seeks to achieve.

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(3) The matters to be taken into account in considering whether the requirements of subsection (2) are satisfied in the case of any authorisation shall include whether what it is thought necessary to achieve by the authorised action could reasonably be achieved by other means.

(4) Her Majesty's Procureur shall not grant an authorisation under this section except upon an application by or on behalf of -

- (a) the Chief Officer of the Island Police Force;
- (b) the Chief Officer of Customs and Excise;
- (c) such persons as may be designated for the purposes of this section by regulation made by the Committee.

(5) The powers conferred by, or by virtue of, this section are additional to any other powers which a person has as a police officer or a customs officer either at common or customary law or under or by virtue of any other enactment and are not to be taken to affect any of those other powers.

Urgent authorisations

41. (1) This section applies -

- (a) where it is not reasonably practicable for Her Majesty's Procureur to consider an application for an authorisation under section 40;
- (b) where the case is urgent; or
- (c) in such circumstances as Her Majesty's Procureur

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directs.

- (2) Where this section applies -
 - (a) the Chief Officer of the Island Police Force;
 - (b) the Chief Officer of Customs and Excise; or
 - (c) a person designated for the purposes of this section by regulations made by the Committee,

may authorise the taking of such action as he may specify in respect of such property as he may specify, or in respect of wireless telegraphy.

(3) A person shall not give an authorisation under subsection (2) unless he believes that -

- (a) it is necessary for the action specified to be taken for the purpose of preventing or detecting serious crime or in the interests of national security; and
- (b) that the taking of the action is proportionate to what the action seeks to achieve.

(4) The matters to be taken into account in considering whether the requirements of subsection (3) are satisfied in the case of any authorisation shall include whether what it is thought necessary to achieve by the authorised action could reasonably be achieved by other means.

Notification of urgent authorisations

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42. (1) Where a person gives an authorisation under section 41, he shall, as soon as is reasonably practicable, and in accordance with arrangements made by Her Majesty's Procureur, give notice that he has done so to Her Majesty's Procureur.

(2) Where a notice is given to Her Majesty's Procureur under this section, he shall scrutinise the notice as soon as reasonably practicable and shall -

- (a) decide whether to approve the authorisation or to refuse approval, and
- (b) give written notice of his decision to the person who gave the authorisation.

(3) Her Majesty's Procureur shall approve an authorisation if, and only if, he is satisfied that there are reasonable grounds for believing the matters specified in section 41(3).

(4) Where Her Majesty's Procureur approves an authorisation given under section 41, the authorisation shall have effect from the time of its grant.

Authorisation: form and duration

43. (1) An authorisation shall be in writing, except that in an urgent case an authorisation may be given orally.

(2) An authorisation shall, unless renewed under subsection (3), cease to have effect -

- (a) if given orally or by virtue of section 41, at the end of the period of 72 hours beginning with the time when it

took effect;

- (b) in any other case, at the end of the period of three months beginning with the day on which it took effect.

(3) If at any time before an authorisation would cease to have effect Her Majesty's Procureur considers it necessary for the authorisation to continue to have effect for the purpose for which it was issued, he may, in writing, renew it for a period of three months beginning with the day on which it would cease to have effect.

(4) Her Majesty's Procureur shall cancel any authorisation if satisfied that the authorisation is one in relation to which the requirements of paragraphs (a) and (b) of section 40(2) or 41(3) are no longer satisfied.

Notification of authorisations to Commissioner

44. Her Majesty's Procureur shall from time to time and, in any event, at least every twelve months, notify the Commissioner in writing of authorisations and approvals given, renewed or cancelled by him under this Chapter and, where an authorisation was given orally, of the grounds upon which the case was believed to be urgent.

Supplementary and interpretation of Chapter II

45. (1) In this Chapter -

“**wireless telegraphy**” means the emitting or receiving, over paths which are not provided by any material substance constructed or arranged for that purpose, of electro-magnetic energy of a frequency not exceeding 3 million megacycles a second, being energy which either -

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- (a) serves for the conveying of messages, sound or visual images, whether the messages sound or images are actually received by any person or not, or for the actuation or control of machinery or apparatus; or
- (b) is used in connection with the determination of position, bearing or distance or for the gaining of information as to the presence, absence, position or motion of any object or of any objects of any class;

and in relation to wireless telegraphy, “**interference**” means the prejudicing by any emission or reflection of electromagnetic energy of the fulfilment of the purposes of the telegraphy, either generally or in part, and, without prejudice to the generality of the preceding words, as respects all, or as respects any of the recipients or intended recipients of any message, sound or visual image intended to be conveyed by the telegraphy.

- (2) Where, under this Chapter, notice of any matter is required to be given in writing, the notice may be transmitted by electronic means.

PART III
INVESTIGATION OF ELECTRONIC DATA PROTECTED BY
ENCRYPTION ETC.

Power to require disclosure

Notices requiring disclosure

46. (1) This section applies where any protected information -
- (a) has come into the possession of any person by means of the exercise of a statutory power to seize, detain, inspect, search or otherwise to interfere with documents or other property, or is likely to do so;
 - (b) has come into the possession of any person by means of the exercise of any statutory power to intercept communications, or is likely to do so;
 - (c) has come into the possession of any person by means of the exercise of any power conferred by an authorisation under section 18(3) or under Part II, or as a result of the giving of a notice under section 18(4), or is likely to do so;
 - (d) has come into the possession of any person as a result of having been provided or disclosed in pursuance of any statutory duty (whether or not one arising as a result of a request for information), or is likely to do so; or
 - (e) has, by any other lawful means not involving the exercise of statutory powers, come into the possession of any police officer, any customs officer or any member of the intelligence services, or is likely to do so.

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(2) If any person with the appropriate permission under Schedule 2 believes, on reasonable grounds -

- (a) that a key to the protected information is in the possession of any person,
- (b) that the imposition of a disclosure requirement in respect of the protected information is -
 - (i) necessary on grounds falling within subsection (3), or
 - (ii) necessary for the purpose of securing the effective exercise or proper performance by any public authority of any statutory power or statutory duty,
- (c) that the imposition of such a requirement is proportionate to what is sought to be achieved by its imposition; and
- (d) that it is not reasonably practicable for the person with the appropriate permission to obtain possession of the protected information in an intelligible form without the giving of a notice under this section,

the person with that permission may, by notice to the person whom he believes to have possession of the key, impose a disclosure requirement in respect of the protected information.

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(3) A disclosure requirement in respect of any protected information is necessary on grounds falling within this subsection if it is necessary -

- (a) in the interests of national security;
- (b) for the purpose of preventing or detecting crime; or
- (c) in the interests of the economic well-being of the Bailiwick.

(4) A notice under this section imposing a disclosure requirement in respect of any protected information -

- (a) must be given in writing or (if not in writing) must be given in a manner that produces a record of its having been given;
- (b) must describe the protected information to which the notice relates;
- (c) must specify the matters falling within subsection (2)(b)(i) or (ii) by reference to which the notice is given;
- (d) must specify the office, rank or position held by the person giving it;
- (e) must specify the person who for the purposes of Schedule 2 granted the appropriate permission for the giving of the notice;

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- (f) must specify the time by which the notice is to be complied with; and
- (g) must set out the disclosure that is required by the notice and the form and manner in which it is to be made;

and the time specified for the purposes of paragraph (f) must allow a period for compliance which is reasonable in all the circumstances.

- (5) Where it appears to a person with the appropriate permission-
 - (a) that more than one person is in possession of the key to any protected information,
 - (b) that any of those persons is in possession of that key in his capacity as an officer or employee of any body corporate, and
 - (c) that another of those persons is the body corporate itself or another officer or employee of the body corporate,

a notice under this section shall not be given, by reference to his possession of the key, to any officer or employee of the body corporate unless he is a senior officer of the body corporate or it appears to the person giving the notice that there is no senior officer of the body corporate and (in the case of an employee) no more senior employee of the body corporate to whom it is reasonably practicable to give the notice.

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- (6) Where it appears to a person with the appropriate permission-
- (a) that more than one person is in possession of the key to any protected information,
 - (b) that any of those persons is in possession of that key in his capacity as an employee of a firm, and
 - (c) that another of those persons is the firm itself or a partner of the firm,

a notice under this section shall not be given, by reference to his possession of the key, to any employee of the firm unless it appears to the person giving the notice that there is neither a partner of the firm nor a more senior employee of the firm to whom it is reasonably practicable to give the notice.

(7) Subsections (5) and (6) shall not apply to the extent that there are special circumstances of the case that mean that the purposes for which the notice is given would be defeated, in whole or in part, if the notice were given to the person to whom it would otherwise be required to be given by those subsections.

(8) A notice under this section shall not require the making of any disclosure to any person other than -

- (a) the person giving the notice; or
- (b) such other person as may be specified in or otherwise identified by, or in accordance with, the provisions of

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the notice.

(9) A notice under this section shall not require the disclosure of any key which -

(a) is intended to be used for the purpose only of generating electronic signatures; and

(b) has not in fact been used for any other purpose.

(10) In this section “**senior officer**”, in relation to a body corporate, means a director, manager, secretary or other similar officer of the body corporate; and for this purpose “**director**”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

(11) Schedule 2 shall have effect.

Effect of notice imposing disclosure requirement

47. (1) Subject to the following provisions of this section, the effect of a section 46 notice imposing a disclosure requirement in respect of any protected information on a person who is in possession at a relevant time of both the protected information and a means of obtaining access to the information and of disclosing it in an intelligible form is that he -

(a) shall be entitled to use any key in his possession to obtain access to the information or to put it into an intelligible form; and

(b) shall be required, in accordance with the notice imposing the requirement, to make a disclosure of the

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information in an intelligible form.

(2) A person subject to a requirement under subsection (1)(b) to make a disclosure of any information in an intelligible form shall be taken to have complied with that requirement if -

- (a) he makes, instead, a disclosure of any key to the protected information that is in his possession; and
- (b) that disclosure is made, in accordance with the notice imposing the requirement, to the person to whom, and by the time by which, he was required to provide the information in that form.

(3) Where, in a case in which a disclosure requirement in respect of any protected information is imposed on any person by a section 46 notice -

- (a) that person is not in possession of the information,
- (b) that person is incapable, without the use of a key that is not in his possession, of obtaining access to the information and of disclosing it in an intelligible form, or
- (c) the notice states, in pursuance of a direction under section 48, that it can be complied with only by the disclosure of a key to the information,

the effect of imposing that disclosure requirement on that person is that he shall be required, in accordance with the notice imposing the requirement, to make a

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disclosure of any key to the protected information that is in his possession at a relevant time.

(4) Subsections (5) to (7) apply where a person (“the person given notice”) -

(a) is entitled or obliged to disclose a key to protected information for the purpose of complying with any disclosure requirement imposed by a section 46 notice; and

(b) is in possession of more than one key to that information.

(5) It shall not be necessary, for the purpose of complying with the requirement, for the person given notice to make a disclosure of any keys in addition to those the disclosure of which is, alone, sufficient to enable the person to whom they are disclosed to obtain access to the information and to put it into an intelligible form.

(6) Where -

(a) subsection (5) allows the person given notice to comply with a requirement without disclosing all of the keys in his possession; and

(b) there are different keys, or combinations of keys, in the possession of that person the disclosure of which would, under that subsection, constitute compliance,

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the person given notice may select which of the keys, or combination of keys, to disclose for the purpose of complying with that requirement in accordance with that subsection.

(7) Subject to subsections (5) and (6), the person given notice shall not be taken to have complied with the disclosure requirement by the disclosure of a key unless he has disclosed every key to the protected information that is in his possession at a relevant time.

(8) Where, in a case in which a disclosure requirement in respect of any protected information is imposed on any person by a section 46 notice -

- (a) that person has been in possession of the key to that information but is no longer in possession of it,
- (b) if he had continued to have the key in his possession, he would have been required by virtue of the giving of the notice to disclose it, and
- (c) he is in possession, at a relevant time, of information to which subsection (9) applies,

the effect of imposing that disclosure requirement on that person is that he shall be required, in accordance with the notice imposing the requirement, to disclose all such information to which subsection (9) applies as is in his possession and as he may be required, in accordance with that notice, to disclose by the person to whom he would have been required to disclose the key.

(9) This subsection applies to any information that would facilitate the obtaining or discovery of the key or the putting of the protected

information into an intelligible form.

(10) In this section “**relevant time**”, in relation to a disclosure requirement imposed by a section 46 notice, means the time of the giving of the notice or any subsequent time before the time by which the requirement falls to be complied with.

Cases in which key required

48. (1) A section 46 notice imposing a disclosure requirement in respect of any protected information shall not contain a statement for the purposes of section 47(3)(c) unless the person who granted the appropriate permission for the giving of the notice in relation to that information for the purposes of Schedule 2 has given a direction that the requirement can be complied with only by the disclosure of the key itself.

(2) A person shall not give a direction for the purposes of subsection (1) unless he believes -

- (a) that there are special circumstances of the case which mean that the purposes for which it was believed necessary to impose the requirement in question would be defeated, in whole or in part, if the direction were not given; and
- (b) that the giving of the direction is proportionate to what is sought to be achieved by prohibiting any compliance with the requirement in question otherwise than by the disclosure of the key itself.

(3) The matters to be taken into account in considering whether

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the requirement of subsection (2)(b) is satisfied in the case of any direction shall include -

- (a) the extent and nature of any protected information, in addition to the protected information in respect of which the disclosure requirement is imposed, to which the key is also a key; and
- (b) any adverse effect that the giving of the directions might have on a business carried on by the person on whom the disclosure requirement is imposed.

Offences

Failure to comply with a notice

49. (1) A person to whom a section 46 notice has been given is guilty of an offence if he knowingly fails, in accordance with the notice, to make the disclosure required by virtue of the giving of the notice.

(2) In proceedings against any person for an offence under this section, if it is shown that that person was in possession of a key to any protected information at any time before the time of the giving of the section 46 notice, that person shall be taken for the purposes of those proceedings to have continued to be in possession of that key at all subsequent times, unless it is shown that the key was not in his possession after the giving of the notice and before the time by which he was required to disclose it.

(3) For the purposes of this section a person shall be taken to have shown that he was not in possession of a key to protected information at a particular time if -

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- (a) sufficient evidence of that fact is adduced to raise an issue with respect to it; and
- (b) the contrary is not proved beyond a reasonable doubt.

(4) In proceedings against any person for an offence under this section it shall be a defence for that person to show -

- (a) that it was not reasonably practicable for him to make the disclosure required by virtue of the giving of the section 46 notice before the time by which he was required, in accordance with that notice, to make it; but
- (b) that he did make that disclosure as soon after that time as it was reasonably practicable for him to do so.

(5) A person guilty of an offence under this section shall be liable-

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

Tipping-off

50. (1) This section applies where a section 46 notice contains a

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provision requiring -

- (a) the person to whom the notice is given, and
- (b) every other person who becomes aware of it or of its contents,

to keep secret the giving of the notice, its contents and the things done in pursuance of it.

(2) A requirement to keep anything secret shall not be included in a section 46 notice except where it is included with the consent of the person who for the purposes of Schedule 2 granted the appropriate permission for the giving of the notice.

(3) A section 46 notice shall not contain a requirement to keep anything secret except where the protected information to which it relates -

- (a) has come into the possession of a police officer, a customs officer or a member of any of the intelligence services, or
- (b) is likely to come into the possession of a police officer, a customs officer or a member of any of the intelligence services,

by means which it is reasonable, in order to maintain the effectiveness of any investigation or operation or of investigatory techniques generally, or in the interests of the safety or well-being of any person, to keep secret from a particular person.

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(4) A person who makes a disclosure to any other person of anything that he is required by a section 46 notice to keep secret shall be guilty of an offence and liable -

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

(5) In proceedings against any person for an offence under this section in respect of any disclosure, it shall be a defence for that person to show that -

- (a) the disclosure was effected entirely by the operation of software designed to indicate when a key to protected information has ceased to be secure; and
- (b) that person could not reasonably have been expected to take steps, after being given the notice or (as the case may be) becoming aware of it or of its contents, to prevent the disclosure.

(6) In proceedings against any person for an offence under this section in respect of any disclosure, it shall be a defence for that person to show that -

- (a) the disclosure was made by or to an Advocate or other

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professional legal adviser in connection with the giving, by the Advocate or adviser to any client of his, of advice about the effect of provisions of this Part; and

- (b) the person to whom or, as the case may be, by whom it was made was the client or a representative of the client.

(7) In proceedings against any person for an offence under this section in respect of any disclosure, it shall be a defence for that person to show that the disclosure was made by an Advocate or other professional legal adviser -

- (a) in contemplation of, or in connection with, any legal proceedings; and
- (b) for the purposes of those proceedings.

(8) Neither subsection (6) nor subsection (7) applies in the case of a disclosure made with a view to furthering any criminal purpose.

(9) In proceedings against any person for an offence under this section in respect of any disclosure, it shall be a defence for that person to show that the disclosure was confined to a disclosure made to the Commissioner or authorised -

- (a) by the Commissioner;
- (b) by the terms of the notice;

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- (c) by or on behalf of the person who gave the notice; or
- (d) by or on behalf of a person who -
 - (i) is in lawful possession of the protected information to which the notice relates; and
 - (ii) came into possession of that information as mentioned in section 46(1).

(10) In proceedings for an offence under this section against a person other than the person to whom the notice was given, it shall be a defence for the person against whom the proceedings are brought to show that he neither knew nor had reasonable grounds for suspecting that the notice contained a requirement to keep secret what was disclosed.

Safeguards

General duties of specified authorities

- 51.** (1) This section applies to -
- (a) Her Majesty's Procureur;
 - (b) every Committee of the States of Deliberation, the States of Alderney and the Chief Pleas of Sark;
 - (c) the Chief Officer of the Island Police Force;
 - (d) the Chief Officer of Customs and Excise;

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- (e) every person whose officers or employees include persons with duties that involve the giving of section 46 notices; and
- (f) any other description of person prescribed by regulations of the Committee.

(2) It shall be the duty of each of the persons to whom this section applies to ensure that such arrangements are in force, in relation to persons under his control who by virtue of this Part obtain possession of keys to protected information, as he considers necessary for securing -

- (a) that a key disclosed in pursuance of a section 46 notice is used for obtaining access to, or putting into an intelligible form, only protected information in relation to which power to give such a notice was exercised or could have been exercised if the key had not already been disclosed;
- (b) that the uses to which a key so disclosed is put are reasonable having regard both to the uses to which the person using the key is entitled to put any protected information to which it relates and to the other circumstances of the case;
- (c) that, having regard to those matters, the use and any retention of the key are proportionate to what is sought to be achieved by its use or retention;
- (d) that the requirements of subsection (3) are satisfied in

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relation to any key disclosed in pursuance of a section 46 notice;

- (e) that, for the purpose of ensuring that those requirements are satisfied, any key so disclosed is stored, for so long as it is retained, in a secure manner;
- (f) that all records of a key so disclosed (if not destroyed earlier) are destroyed as soon as the key is no longer needed for the purpose of enabling protected information to be put into an intelligible form.

(3) The requirements of this subsection are satisfied in relation to any key disclosed in pursuance of a section 46 notice if -

- (a) the number of persons to whom the key is disclosed or otherwise made available, and
- (b) the number of copies made of the key,

are each limited to the minimum that is necessary for the purpose of enabling protected information to be put into an intelligible form.

(4) Subject to subsection (5), where any relevant person incurs any loss or damage in consequence of -

- (a) any breach by a person to whom this section applies of the duty imposed on him by subsection (2), or

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- (b) any contravention by any person whatever of arrangements made in pursuance of that subsection in relation to persons under the control of a person to whom this section applies,

the breach or contravention shall be actionable against the person to whom this section applies at the suit or instance of the relevant person.

(5) A person is a relevant person for the purposes of subsection (4) if he is -

- (a) a person who has made a disclosure in pursuance of a section 46 notice; or
- (b) a person whose protected information or key has been disclosed in pursuance of such a notice;

and loss or damage shall be taken into account for the purposes of that subsection to the extent only that it relates to the disclosure of particular protected information or a particular key which, in the case of a person falling with paragraph (b), must be his information or key.

(6) For the purposes of subsection (5) -

- (a) information belongs to a person if he has any right that would be infringed by an unauthorised disclosure of the information; and
- (b) a key belongs to a person if it is a key to information that belongs to him or he has any right that would be

infringed by an unauthorised disclosure of the key.

(7) In any proceedings brought by virtue of subsection (4), it shall be the duty of the court to have regard to any opinion with respect to the matters to which the proceedings relate that is or has been given by the Commissioner.

Interpretation of Part III

Interpretation of Part III

52. (1) In this Part -

“**electronic signature**” means anything in electronic form which -

- (a) is incorporated into, or otherwise logically associated with, any electronic communication or other electronic data;
- (b) is generated by the signatory or other source of the communication or data; and
- (c) is used for the purpose of facilitating, by means of a link between the signatory or other source and the communication or data, the establishment of the authenticity of the communication or data, the establishment of its integrity, or both;

“**key**” in relation to any electronic data, means any key, code, password, algorithm or other data the use of which

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(with or without other keys) -

- (a) allows access to the electronic data, or
- (b) facilitates the putting of the data into an intelligible form;

“protected information” means any electronic data which, without the key to the data -

- (a) cannot, or cannot readily, be accessed, or
- (b) cannot, or cannot readily, be put into an intelligible form;

“section 46 notice” means a notice under section 46;

“warrant” includes any authorisation, notice or other instrument (however described) conferring a power of the same description as may, in other cases, be conferred by a warrant.

(2) References in this Part to a person's having information (including a key to protected information) in his possession include references -

- (a) to its being in the possession of a person who is under his control so far as that information is concerned;
- (b) to his having an immediate right of access to it, or an immediate right to have it transmitted or otherwise

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supplied to him; and

- (c) to its being, or being contained in, anything which he or a person under his control is entitled, in exercise of any statutory power and without otherwise taking possession of it, to detain, inspect or search.

(3) References in this Part to something's being intelligible or being put into an intelligible form include references to its being in the condition in which it was before an encryption or similar process was applied to it or, as the case may be, to its being restored to that condition.

(4) In this section -

- (a) references to the authenticity of any communication or data are references to any one or more of the following -
 - (i) whether the communication or data comes from a particular person or other source;
 - (ii) whether it is accurately timed and dated;
 - (iii) whether it is intended to have legal effect; and
- (b) references to the integrity of any communication or data are references to whether there has been any tampering with or other modification of the communication or data.

PART IV
SCRUTINY OF INVESTIGATORY POWERS

The Commissioner

Appointment of Commissioner

53. (1) The Bailiff shall appoint a judge of the Court of Appeal as the Commissioner to carry out the functions described in this section.

(2) Subject to subsection (4), the Commissioner shall keep under review -

- (a) the exercise and performance by Her Majesty's Procureur of the powers and duties conferred or imposed on him by or under sections 1 to 10;
- (b) the exercise and performance, by the persons on whom they are conferred or imposed, of the powers and duties conferred or imposed by or under Chapter II of Part I;
- (c) the exercise and performance, by the persons on whom they are conferred or imposed, of the powers and duties imposed by or under Part II;
- (d) the exercise and performance by any person other than a person holding judicial office of the powers and duties conferred or imposed on them otherwise than with the permission of such authority, by or under

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Part III; and

- (e) the adequacy of the arrangements by virtue of which -
 - (i) the duty which is imposed on Her Majesty's Procureur by section 12, and
 - (ii) so far as applicable in relation to persons whose conduct is under review under paragraph (d), the duties imposed by section 51,

are sought to be discharged.

(3) The Commissioner shall give the Tribunal all such assistance (including his opinion as to any issue falling to be determined by the Tribunal) as the Tribunal may require -

- (a) in connection with the investigation of any matter by the Tribunal; or
- (b) otherwise for the purposes of the Tribunal's consideration or determination of any matter.

(4) It shall not be the function of the Commissioner to keep under review the exercise of any power of the States of Guernsey, the States of Alderney, the Chief Pleas of Sark or any committee thereof to make, amend or revoke any legislation.

(5) The Commissioner shall hold office in accordance with the

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terms of his appointment and there shall be paid to him out of monies provided by the States such allowances as the Advisory and Finance Committee may determine, together with travelling and other expenses incurred by him in connection with his functions under this Law.

(6) On the coming into force of this section the Commissioner holding office as the Commissioner under section 8 of the Interception of Communications (Bailiwick of Guernsey) Law, 1997 shall take and hold office as the Commissioner as if appointed under this Law -

- (a) for the unexpired period of his term of office under the 1997 Law; and
- (b) otherwise, on the terms of his appointment under that Law.

Co-operation with and reports by Commissioner

54. (1) It shall be the duty of -

- (a) every person holding office under the Crown, or employed by any committee of the States of Guernsey, the States of Alderney, or the Chief Pleas of Sark,
- (b) every person employed by or for the purpose of the Island Police Force,
- (c) every person employed by or for the purposes of Customs and Excise,
- (d) every person required for the purposes of section 10 to

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provide assistance with giving effect to an interception warrant,

- (e) every person on whom an obligation to take any steps has been imposed under section 11,
- (f) every person by or to whom an authorisation under section 18(3) has been granted,
- (g) every person to whom a notice under section 18(4) has been given,
- (h) every person to whom a notice under section 46 has been given in relation to any information obtained under Part I,
- (i) every person who is or has been employed for the purposes of any business of a person falling within paragraph (d), (e), (g) or (h), and
- (j) any other person of a class or a description as may be prescribed by regulations of the Committee,

to disclose or provide to the Commissioner all such documents and information as he may require for the purpose of enabling him to carry out his functions under section 53.

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

- (a) that there has been a contravention of the provisions of

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this Law in relation to any matter with which the Commissioner is concerned, and

- (b) that the contravention has not been the subject of a report made to the Bailiff by the Tribunal,

he shall make a report to the Bailiff with respect to that contravention.

(3) If it at any time appears to the Commissioner that any arrangements by reference to which the duties imposed by sections 12 and 51 have sought to be discharged have proved inadequate in relation to any matter with which the Commissioner is concerned, he shall make a report to the Bailiff with respect to those arrangements.

(4) From time to time and at least every twelve months, the Commissioner shall make a report to the Bailiff with respect to the carrying out of his functions under section 53.

(5) The Commissioner may also, at any time, make any such other report to the Bailiff on any matter relating to the carrying out of the Commissioner's functions as the Commissioner thinks fit.

(6) The Bailiff shall lay before the Royal Court, for registration at the Greffe, a copy of every annual report made by the Commissioner under subsection (4), together with a statement as to whether any matter has been excluded from that copy in pursuance of subsection (7).

(7) If it appears to the Bailiff, after consultation with the Commissioner, that the publication of any matter in an annual report would be contrary to the public interest or prejudicial to -

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- (a) national security,
- (b) the prevention or detection of serious crime,
- (c) the economic well-being of the Bailiwick, or
- (d) the continued discharge of the functions of any public authority whose activities include activities that are subject to review by the Commissioner,

the Bailiff may exclude that matter from the copy of the report as laid before the Royal Court .

Appointment of Assistant Commissioners

55. (1) The Bailiff may, after consultation with the Commissioner as to numbers, appoint as Assistant Commissioners such number of persons as the Bailiff considers necessary for the purpose of providing the Commissioner with assistance under this section.

(2) A person shall not be appointed as an Assistant Commissioner unless the person holds or has held office as -

- (a) a judge of the Royal Court;
- (b) a judge of the Royal Court of Jersey;
- (c) a judge of the High Court of the Isle of Man;
- (d) a judge of the Crown Court in England;

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- (e) a sheriff in Scotland;
- (f) a county court judge or a resident magistrate in Northern Ireland.

(3) The Commissioner may -

- (a) require any Assistant Commissioner to provide him with assistance in carrying out any of his functions; and
- (b) delegate any of those functions to an Assistant Commissioner, subject to such conditions and restrictions, if any, as the Commissioner thinks fit.

(4) The assistance that may be provided under this section includes -

- (a) the conduct on behalf of the Commissioner of the review of any matter; and
- (b) the making of a report to the Commissioner about the matter reviewed.

(5) An Assistant Commissioner shall be subject to the duty imposed on the Commissioner by section 53(3).

(6) An Assistant Commissioner shall hold office in accordance with the terms of his appointment and there shall be paid to him out of monies

provided by the States such allowances as the Advisory and Finance Committee may determine, together with travelling and other expenses incurred by him in connection with his functions under this Law.

The Tribunal

The Tribunal

56. (1) There shall be a Tribunal in relation to which Schedule 3 to this Law applies.

(2) The jurisdiction of the Tribunal shall be -

- (a) to be the only appropriate Tribunal for the purposes of section 7 of the Human Rights (Bailiwick of Guernsey) Law^g in relation to any proceedings under subsection (1)(a) of that section which fall within subsection (3) of this section;
- (b) to consider and determine any complaints made to them which, in accordance with subsection (4), are complaints for which the Tribunal is the appropriate forum;
- (c) to consider and determine any reference to them by any person that he has suffered detriment as a consequence of any prohibition or restriction, by virtue of section 14 on his relying in, or for the purposes of, any civil proceedings on any matter; and

^g Order in Council No. XIV of 2000.

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(d) to hear and determine any other such proceedings falling within subsection (3) as may be allocated to them in accordance with provision made by order of the Royal Court.

(3) Proceedings fall within this subsection if -

(a) they are proceedings against any of the intelligence services in respect of any discharge of their functions within the Bailiwick;

(b) they are proceedings against any other person in respect of any conduct, or proposed conduct, by or on behalf of any of those services;

(c) they are proceedings brought by virtue of section 51(4); or

(d) they are proceedings relating to the taking place in any challengeable circumstances of any conduct falling within subsection (5).

(4) The Tribunal shall be the appropriate forum for any complaint if it is a complaint by a person who is aggrieved by any conduct falling within subsection (5) which that person believes -

(a) to have taken place in relation to him, to any of his property, to any communications sent by or to him, or intended for him, or to his use of any postal service,

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telecommunications service or telecommunication system; and

- (b) to have taken place in challengeable circumstances or to have been carried out by or on behalf of any of the intelligence services.

(5) Subject to subsection (6), conduct falls within this subsection if (whenever it occurred) it is -

- (a) conduct by or on behalf of any of the intelligence services;
- (b) conduct for or in connection with the interception of communications in the course of their transmission by means of a postal service or telecommunication system;
- (c) conduct to which Chapter II of Part I applies;
- (d) conduct to which Part II applies;
- (e) the giving of a notice under section 46 or any disclosure or use of a key to protected information;
- (f) any entry on or interference with property or any interference with wireless telegraphy.

(6) For the purposes only of subsection (3), nothing mentioned in paragraph (d) or (f) of subsection (5) shall be treated as falling within that

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subsection unless it is conduct by or on behalf of a person holding any office, rank or position with -

- (a) any of the intelligence services;
- (b) any of Her Majesty's forces;
- (c) the Island Police Force;
- (d) Customs and Excise;

and section 67(5) applies for the purposes of this subsection as it applies for the purposes of Part II.

(7) For the purposes of this section conduct takes place in challengeable circumstances if -

- (a) it takes place with the authority, or purported authority, of anything falling within subsection (8); or
- (b) the circumstances are such that (whether or not there is such authority) it would not have been appropriate for the conduct to take place without it, or at least without proper consideration having been given to whether such authority should be sought;

but conduct does not take place in challengeable circumstances to the extent that it is authorised by, or takes place with the permission of a person holding judicial office.

(8) The following fall within this subsection -

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- (a) an interception warrant or a warrant under the Interception of Communications (Bailiwick of Guernsey) Law, 1997;
 - (b) an authorisation or notice under Chapter II of Part I of this Law;
 - (c) an authorisation under Part II of this Law;
 - (d) a permission for the purposes of Schedule 2 to this Law; or
 - (e) a notice under section 46 of this Law.
- (9) In this section -
- (a) references to a key and to protected information shall be construed in accordance with section 52;
 - (b) references to the disclosure or use of a key to protected information taking place in relation to a person are references to such a disclosure or use taking place in a case in which that person has had possession of the key or of the protected information; and
 - (c) references to the disclosure of a key to protected information include references to the making of any disclosure in an intelligible form (within the meaning

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of section 52) of protected information by a person who is or has been in possession of the key to that information;

and the reference in paragraph (b) to a person's having possession of a key or of protected information shall be construed in accordance with section 52.

Allocation of proceedings to the Tribunal

57. (1) An order under section 56(2)(d) allocating proceedings to the Tribunal -

(a) may provide for the Tribunal to exercise jurisdiction in relation to that matter to the exclusion of the jurisdiction of any court or tribunal; but

(b) if it does so provide, must contain provision conferring a power on the Tribunal, in the circumstances provided for in the order to remit the proceedings to the court or tribunal which would have had jurisdiction apart from the order.

(2) In making any provision by order under section 50(2)(d) the Royal Court shall have regard, in particular, to -

(a) the need to secure that proceedings allocated to the Tribunal are properly heard and considered; and

(b) the need to secure that information is not disclosed to an extent, or in a manner, that is contrary to the public interest or prejudicial to national security, the

prevention or detection of serious crime, the economic well-being of the Bailiwick or the continued discharge of the functions of any of the intelligence services.

Exercise of the Tribunal's jurisdiction

58. (1) Subject to subsections (4) and (5), it shall be the duty of the Tribunal -

- (a) to hear and determine any proceedings brought before them by virtue of section 56(2)(a) or (d); and
- (b) to consider and determine any complaint or reference made to them by virtue of section 56(2)(b) or (c).

(2) Where the Tribunal hear any proceedings by virtue of section 56(2)(a), they shall apply the same principles for making their determination in those proceedings as would be applied by a court including whether -

- (a) an error of law has been made;
- (b) a material error as to the facts has been made;
- (c) there was a material procedural error; or
- (d) there was some other material irregularity, including unreasonableness or lack of proportionality.

(3) Where the Tribunal consider a complaint made to them by virtue of section 56(2)(b), it shall be the duty of the Tribunal -

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(a) to investigate whether the persons against whom any allegations are made in the complaint have engaged in relation to -

(i) the complainant,

(ii) any of his property,

(iii) any communications sent by or to him, or intended for him, or

(iv) his use of any postal service, telecommunications service or telecommunication system,

in any conduct falling within section 56(5);

(b) to investigate the authority (if any) for any conduct falling within section 56(5) which they find has been so engaged in; and

(c) in relation to the Tribunal's findings from their investigations, to determine the complaint by applying the same principles as would be applied by a court, including those matters set out in subsection (2)(a) to (d).

(4) The Tribunal shall not be under any duty to hear, consider or determine any proceedings, complaint or reference if it appears to them that the bringing of the proceedings or the making of the complaint or reference is frivolous

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or vexatious.

(5) Except where the Tribunal, having regard to all the circumstances, are satisfied that it is equitable to do so, they shall not consider or determine any complaint made by virtue of section 56(2)(b) if it is made more than one year after the taking place of the conduct to which it relates.

(6) Subject to any provision made by rules under section 60, where any proceedings have been brought before the Tribunal or any reference made to the Tribunal, they shall have power to make such interim orders, pending their final determination, as they think fit.

(7) Subject to any provision made by rules under section 60, the Tribunal on determining any proceedings, complaint or reference shall have power to make any such award of compensation or other order as they think fit; and, without prejudice to the power to make rules under section 60(2)(h), the other orders that may be made by the Tribunal include -

- (a) an order quashing or cancelling any warrant or authorisation; and
- (b) an order requiring the destruction of any records of information which -
 - (i) has been obtained in exercise of any power conferred by a warrant or authorisation; or
 - (ii) is held by any public authority in relation to any person.

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(8) Save to the extent provided in subsection (9), a determination, award, order or other decision of the Tribunal, including a decision as to whether they have jurisdiction, shall not otherwise be subject to appeal or be liable to be questioned in any court.

(9) Rules of Court -

- (a) shall make provision allowing for an appeal to the Royal Court against any exercise of the Tribunal's jurisdiction under section 56(2)(c) or (d); and
- (b) may make provision for an appeal against any other determination, award, order or other decision of the Tribunal.

Tribunal procedure

59. (1) Subject to any rules made under section 60, the Tribunal shall be entitled to determine their own procedure in relation to any proceedings, complaint or reference brought before or made to them.

(2) The Tribunal shall have power -

- (a) in connection with the investigation of any matter, or
- (b) otherwise for the purposes of the Tribunal's consideration or determination of any matter,

to require the Commissioner to provide the Tribunal with all such assistance (including the Commissioner's opinion as to any issue falling to be determined by the Tribunal) as the Tribunal think fit.

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(3) Where the Tribunal hear or consider any proceedings, complaint or reference relating to any matter, they shall secure that the Commissioner -

- (a) is aware that the matter is the subject of proceedings, a complaint or a reference brought before or made to the Tribunal; and
- (b) is kept informed of any determination, award, order or other decision made by the Tribunal with respect to that matter.

(4) Where the Tribunal determine any proceedings, complaint or reference brought before or made to them, they shall give notice to the complainant which (subject to any rules made by virtue of section 60(2)(i)) shall be confined, as the case may be, to either -

- (a) a statement that they have made a determination in the complainant's favour; or
- (b) a statement that no determination has been made in his favour.

(5) Where -

- (a) the Tribunal make a determination in favour of any person by whom any proceedings have been brought before the Tribunal or by whom any complaint or reference has been made to the Tribunal; and

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- (b) the determination relates to any act or omission by or on behalf of Her Majesty's Procureur or to conduct for which any warrant, authorisation or permission was issued, granted or given by Her Majesty's Procureur,

they shall make a report of their findings to the Bailiff.

(6) It shall be the duty of the persons specified in subsection (7) to disclose or provide to the Tribunal all such documents and information as the Tribunal may require for the purpose of enabling them -

- (a) to exercise the jurisdiction conferred on them by or under section 56; or
- (b) otherwise to exercise or perform any power or duty conferred or imposed on them by or under this Law,

(7) Those persons are -

- (a) every person holding office under the Crown, or employed by any Committee of the States of Deliberation, the States of Alderney, or the Chief Pleas of Sark,
- (b) every person employed by or for the purposes of the Island Police Force;
- (c) every person employed by or for the purposes of

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Customs and Excise;

- (d) every person required for the purposes of section 10 to provide assistance with giving effect to an interception warrant;
- (e) every person on whom an obligation to take any steps has been imposed under section 11;
- (f) every person by or to whom an authorisation under section 18(3) has been granted;
- (g) every person to whom a notice under section 18(4) has been given;
- (h) every person by whom, or on whose application, there has been granted or given any authorisation under Part II of this Law;
- (i) every person who holds or has held any office, rank or position with the same public authority as a person falling within paragraph (h);
- (j) every person who has engaged in any conduct with the authority of an authorisation under section 18;
- (k) every person who holds or has held any office, rank or position with a public authority for whose benefit any such authorisation has been or may be given;

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- (l) every person to whom a notice under section 46 has been given; and
- (m) every person who is or has been employed for the purposes of any business of a person falling within paragraph (d), (e), (g) or (l).

(8) In this section, a reference to the Commissioner includes a reference to any Assistant Commissioner who under section 55 assisted the Commissioner in the matter or to whom the Commissioner delegated any function in respect of the matter.

Tribunal rules

60. (1) The Royal Court may make rules regulating -

- (a) the exercise by the Tribunal of the jurisdiction conferred on them by or under section 56; and
- (b) any matters preliminary or incidental to, or arising out of, the hearing or consideration of any proceedings, complaint or reference brought before or made to the Tribunal.

(2) Without prejudice to the generality of subsection (1), rules under this section may -

- (a) enable the jurisdiction of the Tribunal to be exercised at any place in the Bailiwick by any two or more members of the Tribunal designated for the purpose by the President of the Tribunal;

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- (b) enable different members of the Tribunal to carry out functions in relation to different complaints at the same time;
- (c) prescribe the form and manner in which proceedings are to be brought before the Tribunal or a complaint or reference is to be made to the Tribunal;
- (d) require persons bringing proceedings or making complaints or references to take such preliminary steps, and to make such disclosures, as may be specified in the rules for the purpose of facilitating a determination of whether -
 - (i) the bringing of the proceedings, or
 - (ii) the making of the complaint or reference,is frivolous or vexatious;
- (e) make provision about the determination of any question as to whether a person by whom -
 - (i) any proceedings have been brought before the Tribunal, or
 - (ii) any complaint or reference has been made to the Tribunal,

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is a person with a right to bring those proceedings or make that complaint or reference;

- (f) prescribe the forms of hearing or consideration to be adopted by the Tribunal in relation to particular proceedings, complaints or references (including a form that requires any proceedings brought before the Tribunal to be disposed of as if they were a complaint or reference made to the Tribunal);
- (g) prescribe the practice and procedure to be followed on, or in connection with, the hearing or consideration of any proceedings, complaint or reference (including, where applicable, the mode and burden of proof and the admissibility of evidence);
- (h) prescribe orders that may be made by the Tribunal under section 58(6) or (7);
- (i) require information about any determination, award, order or other decision made by the Tribunal in relation to any proceedings, complaint or reference to be provided (in addition to any statement under section 59(4)) to the person who brought the proceedings or made the complaint or reference, or to the person representing his interests.

(3) Rules under this section in relation to the hearing or consideration of any matter by the Tribunal may provide -

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- (a) for a person who has brought any proceedings before or made any complaint or reference to the Tribunal to have the right to be legally represented;
 - (b) for the manner in which the interests of a person who has brought any proceedings before or made any complaint or reference to the Tribunal are otherwise to be represented;
 - (c) for the appointment in accordance with the rules, by such person as may be determined in accordance with the rules, of a person to represent those interests in the case of any proceedings, complaint or reference.
- (4) The power to make rules under this section includes power to make rules -
- (a) enabling or requiring the Tribunal to hear or consider any proceedings, complaint or reference without the person who brought the proceedings or made the complaint or reference having been given full particulars of the reasons for any conduct which is the subject of the proceedings, complaint or reference;
 - (b) enabling or requiring the Tribunal to take any steps in exercise of their jurisdiction in the absence of any person (including the person bringing the proceedings or making the complaints or reference and any legal representative of his);

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- (c) enabling or requiring the Tribunal to give a summary of any evidence taken in his absence to the person by whom the proceedings were brought or, as the case may be, to the person who made the complaint or reference;
 - (d) enabling or requiring the Tribunal to exercise their jurisdiction, and to exercise and perform the powers and duties conferred or imposed on them (including in particular, in relation to the giving of reasons) in such manner provided for in the rules as prevents or limits the disclosure of particular matters.
- (5) Rules under this section may also include provision -
- (a) enabling powers or duties of the Tribunal that relate to matter preliminary or incidental to the hearing or consideration of any proceedings, complaint or reference to be exercised or performed by a single member of the Tribunal; and
 - (b) conferring on the Tribunal such ancillary powers as the Royal Court considers necessary for the purposes of, or in connection with, the exercise of the Tribunal's jurisdiction, or the exercise or performance of any power or duty conferred or imposed on them.
- (6) In making rules under this section the Royal Court shall have regard, in particular, to -

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- (a) the need to secure that matters which are the subject of proceedings, complaints or references brought before or made to the Tribunal are properly heard and considered; and
- (b) the need to secure that information is not disclosed to an extent, or in a manner, that is contrary to the public interest or prejudicial to national security, the prevention or detection of serious crime, the economic well-being of the Bailiwick or the continued discharge of the functions of any of the intelligence services.

Codes of practice

Issue and revision of codes of practice

61. (1) The Committee shall issue one or more codes of practice relating to the exercise and performance of the powers and duties that are conferred or imposed (otherwise than on the Commissioner) by or under Parts I to III of this Law.

(2) Before issuing a code of practice under subsection (1) the Committee shall -

- (a) prepare and publish a draft of that code; and
- (b) consider any representations made to it about the draft;

and the Committee may modify the draft accordingly.

(3) After the Committee has complied with subsection (2), it may

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bring the code of practice into operation by order.

(4) 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.

(5) The Committee may from time to time revise the whole or any part of a code issued under this section and issue that revised code; and subsections (2) to (4) shall apply (with appropriate modifications) in relation to the issue of any revised code under this section as they apply in relation to the first issue of such a code.

Effects of codes of practice

62. (1) A person exercising or performing any power or duty in relation to which provision may be made by a code of practice under section 61 shall, in doing so, have regard to the provisions (so far as they are applicable) of every code of practice for the time being in force under that section.

(2) A failure on the part of any person to comply with any provision of a code of practice for the time being in force under section 61 shall not of itself render him liable to any criminal or civil proceedings.

(3) A code of practice in force at any time under section 61 shall be admissible in evidence in any criminal or civil proceedings.

(4) If any provision of a code of practice issued or revised under section 61 appears to -

(a) the court or tribunal conducting any civil or criminal proceedings,

- (b) the Tribunal, or
- (c) the Commissioner or a person carrying out any of the functions of the Commissioner under this Law,

to be relevant to any question arising in the proceedings, or in connection with the exercise of that jurisdiction or the carrying out of those functions, in relation to a time when it was in force, that provision of the said code shall be taken into account in determining that question.

PART V
MISCELLANEOUS AND SUPPLEMENTAL

Offences by body corporate etc.

63. (1) Where an offence under any provision of this Law other than a provision of Part III is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

- (a) a director, manager, secretary or other similar officer of the body corporate, or
- (b) any person who was purporting to act in any such capacity,

he (as well as the body corporate) shall be guilty of that offence and liable to be proceeded against and punished accordingly.

(2) In this section “**director**”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

General saving for lawful conduct

64. Nothing in any of the provisions of this Law by virtue of which conduct of any description is or may be authorised by any warrant, authorisation or notice, or by virtue of which information may be obtained in any manner, shall be construed -

- (a) as making it unlawful to engage in any conduct of that description which is not otherwise unlawful under this Law and would not be unlawful apart from this Law;
- (b) as otherwise requiring -
 - (i) the issue, grant or giving of such a warrant, authorisation or notice, or
 - (ii) the taking of any step for or towards obtaining the authority of such a warrant, authorisation or notice,before any such conduct of that description is engaged in; or
- (c) as prejudicing any power to obtain information by any means not involving conduct that may be authorised under this Law.

Enactment of Ordinances, regulations, orders and rules

65. (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, regulations, order or rules of court under this Law -

- (a) may be amended or repealed by a subsequent Ordinance, regulations, order or rules (as the case may be) hereunder;
- (b) may contain such consequential, incidental, supplementary and transitional provision as may appear to be necessary or expedient.

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(4) Any power conferred by this Law to make any Ordinance, regulations, order or rules of court 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 or order 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 or order be annulled, the regulations or order shall cease to have effect but without prejudice to anything done under the regulations or order or to the making of new regulations or a new order.

(6) Before making any regulations or an order under this Law, the Committee shall consult the Board of Administration, 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 provisions of the regulations or order.

Rules of court.

66. The Royal Court may make rules dealing with all procedural matters arising under this Law and may make different provision in relation to proceedings before different courts of the Bailiwick.

General interpretation

67. (1) The provisions of the Interpretation (Guernsey) Law, 1948^h 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), extended or applied.

(3) In this Law, unless the context otherwise requires -

“**1997 Law**” means the Interception of Communications (Bailiwick of Guernsey) Law, 1997;

“**Advocate**” means an Advocate of the Royal Court of Guernsey;

“**apparatus**” includes any equipment, machinery or device

^h Ordres en Conseil Vol. XIII, p. 345.

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and any wire or cable;

“British Islands” has the meaning given by section 8(1) of the Interpretation (Guernsey) Law, 1948

“certified”, in relation to a section 7(4) certificate, means of a description certified by the certificate as a description of material the examination of which Her Majesty's Procureur considers necessary;

“civil proceedings” means any proceedings in or before any court or tribunal that are not criminal proceedings;

“Commissioner” shall be construed in accordance with section 53;

“Committee” means the States Committee for Home Affairs;

“communication” includes -

- (a) (except in the definition of “postal service”) anything transmitted by means of a postal service;
- (b) anything comprising speech, music, sounds, visual images or data of any description; and
- (c) signals serving either for the impartation of anything between persons, between a person and a thing or between things or for the

actuation or control of any apparatus;

“communications data” means any of the following -

- (a) any traffic data comprised in or attached to a communication (whether by the sender or otherwise) for the purposes of any postal service or telecommunication system by means of which it is being or may be transmitted;
- (b) any information which includes none of the contents of a communication (apart from any information falling within paragraph (a) and is about the use made by any person -
 - (i) of any postal service or telecommunications service; or
 - (ii) in connection with the provision to or use by any person of any telecommunications service, of any part of a telecommunication system;
- (c) any information not falling within paragraph (a) or (b) that is held or obtained, in relation to persons to whom he provides the service, by a person providing a postal service or telecommunications service;

“covert human intelligence source” shall be construed in

accordance with section 21(8);

references to “**crime**” are references to conduct which constitutes one or more criminal offences or is, or corresponds to, any conduct which if it took place in any part of the Bailiwick would constitute one or more criminal offences;

“**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 customs officer acting by or under his authority;

“**customs officer**” means an officer authorised under section 3 of the Customs and Excise (General Provisions)(Bailiwick of Guernsey) Law, 1972ⁱ;

“**designated**” shall be construed in accordance with section 20 for the purposes of Chapter II of Part I;

“**detecting crime**” shall be taken to include -

- (a) establishing by whom, for what purpose, by what means and generally in what circumstances any crime was committed; and
- (b) the apprehension of the person by whom any crime was committed;

ⁱ Ordres en Conseil Vol. XXIII, p573.

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and any reference in this Law to preventing or detecting serious crime shall be construed accordingly, except that, in chapter I of Part I, it shall not include a reference to gathering evidence for use in any legal proceedings;

“**document**” includes a map, plan, design, drawing, picture or other image;

“**enactment**” includes an enactment coming into force after this Law;

“**external communication**” means a communication sent or received outside the British Islands;

“**a firm**” has the meaning given in section 4 of the Partnership (Guernsey) Law, 1995^j;

“**GCHQ**” has the same meaning as in the Intelligence Services Act 1994;

“**government department**” includes any administration or department of the States of Guernsey, the States of Alderney and the Chief Pleas of Sark or any Committee thereof;

“**Her Majesty's forces**” has the same meaning as in the Army Act 1955;

^j Order in Council No. VIII of 1995.

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“Her Majesty’s Procureur” includes Her Majesty’s Comptroller;

“interception” and cognate expressions shall be construed (so far as it is applicable) in accordance with section 2;

“intercepted material”, in relation to an interception warrant, means the contents of any communications intercepted by an interception to which the warrant relates;

“the interception subject”, in relation to an interception warrant, means the person about whose communications information is sought by the interception to which the warrant relates;

“interception warrant” means a warrant issued under section 5;

“international mutual assistance agreement” means an international agreement designated for the purposes of section 1(4);

“intelligence service” means the Security Service, the Secret Intelligence Service or GCHQ;

“Island Police Force” means the salaried police force of the Island of Guernsey;

“judge of the Court of Appeal” means one of the ordinary judges of the Court of Appeal in the Bailiwick of Guernsey

appointed under section 2(2) of the Court of Appeal (Guernsey) Law, 1961^k;

a person holding “**judicial office**” means any person holding judicial office in the Bailiwick, and any Jurat of the Royal Court or the Court of Alderney;

“**legal proceedings**” means civil or criminal proceedings in or before any court or tribunal;

“**modification**” includes alterations, additions and omissions, and cognate expressions shall be construed accordingly;

“**person**” includes any organisation and any association or combination of persons;

“**postal item**” means any letter, postcard or other such thing in writing as may be used by the sender for imparting information to the recipient, or any packet or parcel;

“**postal or telecommunications operator**” means a person who provides a postal service or telecommunications service;

“**postal service**” means any service which -

- (a) consists in the following, or in any one or more of them, namely, the collection, sorting, conveyance, distribution and delivery (whether

^k Ordres en Conseil Vol. XVIII, p315.

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in the Bailiwick or elsewhere) of postal items;
and

- (b) is offered or provided as a service the main purpose of which, or one of the main purposes of which, is to make available, or to facilitate, a means of transmission from place to place of postal items containing communications;

“premises” includes any vehicle or moveable structure and any other place whatever, whether or not occupied as land;

“private telecommunication system” means any telecommunication system which, without itself being a public telecommunication system, is a system in relation to which the following conditions are satisfied -

- (a) it is attached, directly or indirectly and whether or not for the purposes of the communication in question, to a public telecommunication system; and
- (b) there is apparatus comprised in the system which is both located in the Bailiwick and used (with or without other apparatus) for making the attachment to the public telecommunication system;

“private vehicle” means (subject to subsection (4)(a)) any vehicle which is used primarily for the private purposes of the

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person who owns it or of a person otherwise having the right to use it;

“public authority” means any public authority within the meaning of section 6 of the Human Rights (Bailiwick of Guernsey) Law, 2000 other than a court or tribunal;

“public postal service” means any postal service which is offered or provided to, or to a substantial section of, the public in any one or more parts of the Bailiwick;

“public telecommunication service” means any telecommunications service which is offered or provided to, or to a substantial section of, the public in any one or more parts of the Bailiwick;

“public telecommunications system” means any such parts of a telecommunication system by means of which any public telecommunications service is provided as are located in the Bailiwick;

“related communications data”, in relation to a communication intercepted in the course of its transmission by means of a postal service or telecommunication system, means so much of any communications data as -

- (a) is obtained by, or in connection with, the interception; and
- (b) relates to the communication or to the sender

or recipient, or intended recipient, of the communication;

“relevant public authority” (in Part I of this Law) shall be construed in accordance with section 20;

“residential premises” means (subject to subsection (4)(b)) so much of any premises as is for the time being occupied or used by any person, however temporarily, for residential purposes or otherwise as living accommodation (including hotel or prison accommodation that is so occupied or used);

“section 7(4) certificate” means any certificate issued for the purposes of section 7(4);

“Secret Intelligence Service” means the service continued by section 1 of the Intelligence Services Act, 1994;

“Security Service” means the service continued by section 1 of the Security Services Act 1989¹;

“senior authorising officer” means a person who by virtue of subsection (6) of section 26 is a senior authorising officer for the purposes of that section;

“serious crime” means conduct which constitutes one or more criminal offences -

¹ (1989 Ch.5) An Act of Parliament.

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

“statutory” in relation to any power or duty, means conferred or imposed by or under any enactment;

“surveillance” shall be construed in accordance with section 69; and **“directed”** and **“intrusive”**, in relation to surveillance, shall be construed in accordance with section 21(2) to (6);

“surveillance device” means any apparatus designed or adapted for use in surveillance;

“Technical Advisory Panel” means the Panel established under section 11(12);

“telecommunications service” means any service that consists in the provision of access to, and of facilities for making use of, any telecommunication system (whether or not one provided by the person providing the service);

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“telecommunication system” means any system (including the apparatus comprised in it) which exists (whether wholly or partly in the Bailiwick or elsewhere) for the purpose of facilitating the transmission of communications by any means involving the use of electrical or electro-magnetic energy.

“the Tribunal” means the tribunal established under section 56;

“vehicle” includes any vessel or aircraft;

“wireless telegraphy” has the meaning given in section 45;

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday, Liberation Day or a day which is a public holiday in any part of the Bailiwick.

- (4) In subsection (3) -
- (a) the reference to a person having the right to use a vehicle does not, in relation to a motor vehicle, include a reference to a person whose right to use the vehicle derives only from his having paid, or undertaken to pay, for the use of the vehicle and its driver for a particular journey; and
 - (b) the reference to premises occupied or used by any person for residential purposes or otherwise as living accommodation does not include a reference to so much of any premises as constitutes any common area

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to which he has or is allowed access in connection with his use or occupation of any accommodation.

(5) References in Part II of this Law to an individual holding an office or position with a public authority include references to any member, official or employee of that authority.

(6) For the purposes of this Law the activities of a covert human intelligence source which are to be taken as activities for the benefit of a particular public authority include any conduct of his as such a source which is in response to inducements or requests made by or on behalf of that authority.

(7) For the purposes of this Law references to the Bailiwick or to any part or area of the Bailiwick include any adjacent waters within the seaward limits of the territorial waters for the time being of the Bailiwick.

(8) In this Law references to a person holding office under the Crown include references to any servant of the Crown and to any member of Her Majesty's forces.

Meaning of “traffic data”

68. (1) In this Law, “**traffic data**”, in relation to any communication, means -

- (a) any data identifying, or purporting to identify, any person, apparatus or location to or from which the communication is or may be transmitted;
- (b) any data identifying or selecting, or purporting to identify or select, apparatus through which, or by

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means of which, the communication is or may be transmitted;

- (c) any data comprising signals for the actuation of apparatus used for the purposes of a telecommunication system for effecting (in whole or in part) the transmission of any communication, and
- (d) any data identifying the data or other data as data comprised in or attached to a particular communication,

but that expression includes data identifying a computer file or computer program access to which is obtained, or which is run, by means of the communication to the extent only that the file or program is identified by reference to the apparatus in which it is stored.

(2) In this section -

- (a) references, in relation to traffic data comprising signals for the actuation of apparatus, to a telecommunication system by means of which a communication is being or may be transmitted include references to any telecommunication system in which that apparatus is comprised; and
- (b) references to traffic data being attached to a communication include references to the data and the communication being logically associated with each other;

and in this section “**data**”, in relation to a postal item, means anything written on the outside of the item.

Meaning of “surveillance”

69. (1) Subject to subsection (2), in this Law “**surveillance**” includes-

- (a) monitoring, observing or listening to persons, their movements, their conversations or their other activities or communications;
- (b) recording anything monitored, observed or listened to in the course of surveillance; and
- (c) surveillance by or with the assistance of a surveillance device.

(2) References in this Law to surveillance do not include references to -

- (a) any conduct of a covert human intelligence source for obtaining or recording (whether or not using a surveillance device) any information which is disclosed in the presence of the source;
- (b) the use of a covert human intelligence source for so obtaining or recording information; or
- (c) any such entry on or interference with property or

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with wireless telegraphy as would be unlawful unless authorised under section 5 of the Intelligence Services Act 1994 (warrants for the intelligence services).

(3) References in this Law to surveillance include references to the interception of a communication in the course of its transmission by means of a postal service or telecommunication system if, and only if -

- (a) the communication is one sent by or intended for a person who has consented to the interception of communications sent by or to him; and
- (b) there is no interception warrant authorising the interception.

Index of defined expressions

70. In this Law the expressions listed below are defined by the provisions specified.

<i>Expression</i>	<i>Interpretation Provision</i>
1997 Law	Section 67(3)
applicable public authority (Part II)	Schedule 1
Advocate	Section 67(3)
apparatus	Section 67(3)
British Islands	Section 67(3)
certified	Section 67(3)
civil proceedings	Section 67(3)
Commissioner	Section 67(3)
Committee	Section 67(3)

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communication	Section 67(3)
communications data	Section 67(3)
copy	Section 12(8)
covert human intelligence source	Section 21(8)
covert surveillance	Section 21(9)
crime	Section 67(3)
Customs and Excise	Section 67(3)
customs officer	Section 67(3)
designated person	Sections 20(1) and 67(3)
detecting crime	Section 67(3)
directed surveillance	Sections 21(2) to (6)
director	Section 63(2)
document	Section 67(3)
electronic signature	Section 52
enactment	Section 67(3)
external communication	Section 67(3)
firm	Section 67(3)
GCHQ	Section 67(3)
government department	Section 67(3)
Her Majesty's forces	Section 67(3)
Her Majesty's Procureur	Section 67(3)
interception	Section 67(3)
intercepted communication	Section 14(4)
intercepted material	Section 67(3)
interception subject	Section 67(3)
interception warrant	Sections 5 and 67(3)
international mutual assistance agreement	Section 67(3)
intelligence services	Section 67(3)
intrusive surveillance	Sections 21(2) to (6)

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Island Police Force	Section 67(3)
judge of the Court of Appeal	Section 67(3)
judicial office	Section 67(3)
key	Section 52
legal proceedings	Section 67(3)
modification	Section 67(3)
person	Section 67(3)
postal item	Section 67(3)
postal or telecommunications operator	Section 67(3)
postal service	Section 67(3)
premises	Section 67(3)
private information	Section 21(10)
private telecommunications system	Section 67(3)
private vehicle	Section 67(3)
protected information	Section 52
public authority	Section 67(3)
public postal service	Section 67(3)
public telecommunications service	Section 67(3)
public telecommunications system	Section 67(3)
related communications data	Section 67(3)
relevant interception warrant	Section 11(11)
relevant investigating authority	Section 24(7)
relevant offence	Section 15(10)
relevant period	Section 8(4)
relevant public authority (Part I)	Sections 20 and 67(3)
residential premises	Section 67(3)
section 7(4) certificate	Section 67(3)
Security Service	Section 67(3)
senior authorising officer	Section 67(3)

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senior officer	Section 46 (10)
serious crime	Section 67(3)
statutory	Section 67(3)
surveillance	Section 69
surveillance device	Section 67(3)
Technical Advisory Panel	Section 67(3)
telecommunications service	Section 67(3)
telecommunications system	Section 67(3)
traffic data	Section 68
Tribunal	Section 67(3)
vehicle	Section 67(3)
warrant (Part III)	Section 52
wireless telegraphy	Section 45
working day	Section 67(3)

Amendments, repeals and savings

71. (1) The enactments mentioned in Part I of Schedule 4 to this Law shall have effect with the amendments there specified.

(2) The enactments mentioned in Part II of Schedule 4 to this Law are repealed to the extent there specified.

(3) For the avoidance of doubt it is hereby declared that nothing in this Law (except paragraph 6 of Schedule 4) affects any power conferred on a postal operator by or under any enactment to open, detain or delay any postal packet or to deliver any such packet to a person other than the person to whom it is addressed.

Transitional provisions

72. (1) Where any warrant under the 1997 Law is in force under that Law at the time when the repeal by this Law of section 2 of that Law comes into force, the conduct authorised by that warrant shall be deemed for the period which -

- (a) begins with that time, and
- (b) ends with the time when that warrant would (without being renewed) have ceased to have effect under that Law,

as if it were conduct authorised by an interception warrant issued in accordance with the requirements of Chapter I of Part I of this Law.

(2) Section 12 of this Law shall have effect as if references to interception warrants included references to warrants under section 2 of the 1997 Law, and references in section 12 of this Law to intercepted material shall be construed accordingly.

Citation and commencement

73. (1) This Law may be cited as the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003.

(2) The provisions of this Law shall come into force on such day as the States may by Ordinance appoint; and different days may be appointed under this subsection for different purposes.

SCHEDULES

SCHEDULE 1

APPLICABLE PUBLIC AUTHORITIES UNDER PART II

Section 25

1. The Island Police Force.
2. Customs and Excise.
3. Any of the Intelligence Services.
4. Any of Her Majesty's forces.
5. The Income Tax Authority.
6. The Guernsey Social Security Authority.
7. The Sea Fisheries Committee.
8. The Island Development Committee.
9. The Guernsey Financial Services Commission.
10. The Board of Industry.
11. The Committee for Home Affairs.
12. The Board of Administration.
13. The Board of Health.
14. The Agriculture and Countryside Board.
15. The Water Board.

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16. Any other public authority in the Bailiwick specified by regulations made by the Committee.

SCHEDULE 2

PERSONS HAVING THE APPROPRIATE PERMISSION UNDER PART III

Section 46

General rule for appropriate permission

1. Subject to the following provisions of this Schedule, a person has the appropriate permission in relation to any protected information if, and only if, written permission for the giving of section 46 notices in relation to that information has been granted by a person holding judicial office.

Data obtained under warrant

2. (1) This paragraph applies in the case of protected information falling within section 46(1)(a), (b) or (c) where the statutory power in question is one exercised or to be exercised in accordance with a warrant issued by a person holding judicial office.

(2) Subject to sub paragraph 3 and paragraph 3, a person has the appropriate permission in relation to that protected information (without any further grant of permission under paragraph 1) if -

- (a) the warrant contained permission for the giving of section 46 notices in relation to protected information to be obtained under the warrant ; or
- (b) since the issue of the warrant, written permission has been granted by a person holding judicial office for the giving of such notices in relation to protected information obtained under the warrant.

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- (3) Only a person who -
- (a) was entitled to exercise the power conferred by the warrant, or
 - (b) is of the description of persons on whom the power conferred by the warrant was, or could have been, conferred,

shall be capable of having the appropriate permission in relation to protected information obtained, or to be obtained, under a warrant issued by a person holding judicial office.

General requirements relating to the appropriate permission

3. A person does not have the appropriate permission in relation to any protected information unless the person is either -

- (a) a person who has the protected information in his possession or is likely to obtain possession of it; or
- (b) a person who is authorised (apart from this Law) to act on behalf of such a person.

Duration of permission

4. (1) A permission granted under this Schedule shall not entitle any person to give a section 46 notice at any time after the permission has ceased to have effect.

- (2) Such a permission, once granted, shall continue to have effect

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(notwithstanding the cancellation, expiry or other discharge of any warrant or authorisation in which it is contained or to which it relates) until such time (if any) as it -

- (a) expires in accordance with any limitation on its duration that was contained in its terms; or
- (b) is withdrawn by the person who granted it or by a person holding any office or other position that would have entitled him to grant it.

Rules of Court

5. Rules of Court may prescribe the practice and procedure to be followed in connection with the grant of appropriate permission under this Schedule, including provisions -

- (a) prescribing what particulars of fact or information shall be required upon an application for a grant of such permission;
- (b) specifying the manner in which an application for a grant of permission may be made.

SCHEDULE 3

THE TRIBUNAL

Section 56

Membership of the Tribunal

1. (1) The Tribunal shall consist of five members appointed by the Royal Court, each of whom shall be -

- (a) an Advocate of the Royal Court of Guernsey or Jersey;
- (b) a member of the Bar in England, Scotland or Northern Ireland; or
- (c) a solicitor of the Supreme Court of Judicature of England and Wales, a solicitor in Scotland or a solicitor of the Supreme Court of Northern Ireland;

in each case of not less than ten years standing.

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

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

(4) A member of the Tribunal may be relieved of office by the

Royal Court at his own request.

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

President and Vice-President

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

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

(3) The President of the Tribunal may designate one or more members of the Tribunal to carry out the functions of the Tribunal in relation to any application, complaint, proceedings or matter; and different members of the Tribunal may carry out functions in relation to different matters at the same time.

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

Expenses

3. There shall be paid to the members of the Tribunal from monies provided by the States, such allowances as the States Advisory and Finance Committee may determine together with the travelling and other expenses incurred by them in connection with their functions under this Law.

Officers

4. (1) The Bailiff may, after consultation with the Tribunal, provide the Tribunal with such officers and services as he may consider necessary for the

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proper discharge of the Tribunal's functions.

(2) The Tribunal may authorise any officer provided under this paragraph to obtain any documents or information on the Tribunal's behalf.

SCHEDULE 4

CONSEQUENTIAL AMENDMENTS AND REPEALS

Section 69(1)

PART I - CONSEQUENTIAL AMENDMENTS

The Telecommunications (Bailiwick of Guernsey) Law, 2001.

1. In section 13 of the Telecommunications (Bailiwick of Guernsey) Law, 2001 (offences of interception and disclosure of messages), for subsection (2) there shall be substituted -

- “(2) Subsection (1) does not apply to any disclosure made –
- (a) for the investigation, prevention or detection of crime, or in the interests of national security;
 - (b) in accordance with or the pursuance of the order of any court;
 - (c) for the purposes of any criminal proceedings;
 - (d) in accordance with any warrant, authorisation, approval or notice issued, granted or given under any provision of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003;

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- (e) in pursuance of any duty or requirement under that Law to provide information or produce any documents to the Commissioner or the Tribunal established under sections 53 and 56 of that Law; or
- (f) in compliance with any requirement imposed (apart from that Law) in consequence of the exercise by any person of a statutory power exercisable by him for the purpose of obtaining any document or other information.”

2. After subsection (2) of that Law, there shall be inserted -

“(2A) In any proceedings against a person in respect of any offence under subsection (1), it shall be a defence for the accused to show that he had reasonable grounds for believing that the disclosure was made -

- (a) at the express request of the person by whom or to whom the message was sent or for whom the services were provided; or
- (b) with the express authority in writing of Her Majesty’s Procureur for the purposes set out in subsection (2)(a) or (c).”

3. In subsection (3) of that Law, for “subsection (2)(c)(i)” there shall be substituted “subsection (2)(a)”.

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4. In subsection (5) of that Law, the words “Interception of Communications (Bailiwick of Guernsey) Law, 1997” shall be substituted with “Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003”.

5. After subsection (5) of that Law, there shall be inserted -

“(6) In subsection (2) “**statutory**” and “**Her Majesty’s Procureur**” shall have the same meaning as in the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003”.

The Post Office (Bailiwick of Guernsey) Law, 2001

6. In sections 14(3)(e) and 16 of the Post Office (Bailiwick of Guernsey) Law, 2001^m, after “the Interception of Communications (Bailiwick of Guernsey) Law, 1997” there shall be inserted “or under the authority of an interception warrant issued under section 5 of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003”.

Section 69(2)

PART II - REPEALS

1. The Interception of Communications (Bailiwick of Guernsey) Law 1997 - the whole Law.

^m Order in Council No XV of 2001.