

Covert Surveillance

Code of Practice

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

COVERT SURVEILLANCE

Code of Practice

(Made pursuant to Section 61 of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003)

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BACKGROUND

1.1 This Code of Practice relates to the powers and duties conferred or imposed under Part II of The Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003, hereafter referred to as “the Law”. In this Code -

- “the 1994 Act”, means the Intelligence Services Act 1994, as extended to the Bailiwick by the Intelligence Services Act 1994 (Channel Islands) Order 1994; and
- references to an authorisation granted by Her Majesty’s Procureur includes one granted by Her Majesty’s Comptroller unless specifically stated otherwise.

1.2 This Code applies to every authorisation of covert surveillance or of entry on or interference with wireless telegraphy carried out under Part II of the Law or under section 5 of the 1994 Act by public authorities in the Bailiwick which begins on or after the day on which this Code comes into effect. This Code of Practice provides guidance on the procedures that must be followed in the use of;

- directed surveillance by the public authorities listed in Schedule 1 of the Law or under section 5 of the 1994 Act; and
- intrusive surveillance by those authorities specified in sections 26 and 33 of the Law; and
- entry on, or interference with property (or wireless telegraphy) by those authorities described by virtue of section 40 of the Law.

- 1.3 General observation forms part of the duties of many law enforcement officers and other public authorities and is not usually regulated by the Law. Such observation may involve the use of equipment to merely reinforce normal sensory perception, such as binoculars, or the use of cameras, where this does not involve systematic surveillance of an individual.
- 1.4 Although, the provisions of the Law or of this Code of Practice do not normally cover the use of overt CCTV surveillance systems, since members of the public are aware that such systems are in use, there may be occasions when public authorities use overt CCTV systems for the purposes of a specific investigation or operation. In such cases, authorisation for intrusive or directed surveillance may be necessary.
- 1.5 The Law provides that all Codes of Practice relating to the Law are admissible as evidence in criminal and civil proceedings. If any provision of the Code appears relevant to any court or tribunal considering any such proceedings, or to the Investigatory Powers Tribunal established under the Law, or to H M Procureur, or the Commissioner responsible for overseeing the powers conferred by the Law, it must be taken into account.

General Extent of Powers

- 1.6 Authorisations under the Law can be given for surveillance both inside and outside the Bailiwick of Guernsey. Authorisations for actions outside the Bailiwick of Guernsey can only validate them for the purposes of proceedings in the Bailiwick. An authorisation under Part II of the Law does not take into account the requirements of the country outside the Bailiwick of Guernsey in which the investigation or operation is taking place.

Use of Material in Evidence

- 1.7 Material obtained through covert surveillance may be used as evidence in criminal proceedings. The proper authorisation of surveillance should ensure the admissibility of such evidence under the Common Law, Section 78 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003 and The Human Rights (Bailiwick of Guernsey) Law 2000. Furthermore, the product of the surveillance described in this Code is subject to the ordinary rules for retention and disclosure of relevant unused material.

Directed Surveillance, Intrusive Surveillance and Entry on or Interference with Property or with Wireless Telegraphy.

- 1.8 Directed surveillance is defined in Section 21 (2) of the Law as surveillance which is covert, but not intrusive, and undertaken:

- (a) for the purposes of a specific investigation or 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 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.

- 1.9 Directed surveillance investigations or operations can only be carried out by those public authorities that are listed in or added to Schedule 1 of the Law.

- 1.10 Intrusive surveillance is defined in Section 21 (3) of the Law as 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.
- 1.11 Applications to carry out intrusive surveillance can only be made by the senior authorising officer of those public authorities mentioned in Section 26 (6) of the Law or by a member or official of those authorities listed in or added to Section 33 (1).
- 1.12 Applications to enter on or interfere with property or with wireless telegraphy can only be made by the authorising officers of those authorities listed in or added to Section 40 (4) of the Law. Only members of the Intelligence Services are able to make applications to enter on or interfere with property or with wireless telegraphy under Section 5 of the 1994 Act.

2. GENERAL RULES ON AUTHORISATIONS

- 2.1 An authorisation under Part II of the Law will provide lawful authority for a public authority to carry out surveillance. Responsibility for authorising surveillance investigations or operations will vary, depending on whether the authorisation is for intrusive surveillance or directed surveillance, and which public authority is involved. For the purposes of sections 2 and 3 of this Code, the authorising officer, senior authorising officer or the person who makes an application to HM Procureur will be referred to as an 'authorising officer'.
- 2.2 Part II of the Law does not impose a requirement on public authorities to seek or obtain an authorisation where, under the Law, one is available (see Section 64 of the Law). Nevertheless, where there is an interference by a public authority with the right to respect for private and family life

guaranteed under Article 8 of the European Convention on Human Rights [ECHR] and where there is no other source of lawful authority, the consequence of not obtaining an authorisation under the Law may be that the action is unlawful by virtue of The Human Rights (Bailiwick of Guernsey) Law, 2000.

- 2.3 Public authorities are therefore strongly recommended to seek an authorisation where the surveillance is likely to interfere with a person's Article 8 rights to privacy by obtaining private information about that person, whether or not that person is the subject of the investigation or operation. Obtaining an authorisation will ensure that the action is carried out in accordance with the law and subject to stringent safeguards against abuse.

Necessity and Proportionality

- 2.4 Obtaining an authorisation under the Law and the 1994 Act will only ensure that there is a justifiable interference with an individual's Article 8 rights if it is necessary and proportionate for these activities to take place. The Law first requires that the person granting an authorisation believes that the authorisation is necessary in the circumstances of the particular case for one or more of the statutory grounds in Section 23 (3) of the Law for directed surveillance and in Section 26 (3) of the Law for intrusive surveillance.
- 2.5 Then, if the activities are necessary, the person granting the authorisation must believe that they are proportionate to what is sought to be achieved by carrying them out. This involves balancing the intrusiveness of the activity on the target and others who might be affected by it against the need for the activity in operational terms. The activity will not be proportionate if it is excessive in the circumstances of the case or if the information which is sought could reasonably be obtained by other less intrusive means. All such

activity should be carefully managed to meet the objective in question and must not be arbitrary or unfair.

Collateral Intrusion

- 2.6 Before authorising surveillance the authorising officer should also take into account the risk of intrusion into the privacy of persons other than those who are directly the subjects of the investigation or operation (collateral intrusion). Measures should be taken, wherever practicable, to avoid or minimise unnecessary intrusion into the lives of those not directly connected with the investigation or operation.
- 2.7 An application for an authorisation should include an assessment of the risk of any collateral intrusion. The authorising officer should take this into account, when considering the proportionality of the surveillance.
- 2.8 Those carrying out the surveillance should inform the authorising officer if the investigation or operation unexpectedly interferes with the privacy of individuals who are not covered by the authorisation. When the original authorisation may not be sufficient, consideration should be given to whether the authorisation needs to be amended and re-authorised or a new authorisation is required.
- 2.9 Any person granting or applying for an authorisation or warrant will also need to be aware of particular sensitivities in the local community where the surveillance is taking place and of similar activities being undertaken by other public authorities which could impact on the deployment of surveillance. In this regard, it is recommended that the authorising officers of Customs and Excise and the Island Police Force, consult with one another and any other relevant law enforcement agency where one or other authorising officer considers that conflicts might arise.

2.10 The matters in paragraphs 2.1 – 2.9 above must also be taken into account when applying for authorisations or warrants for entry on or interference with property or with wireless telegraphy. In particular they must be necessary in the circumstances of the particular case for one of the statutory grounds listed in Section 40 (2) of the Law, proportionate, and when exercised steps should be taken to minimise collateral intrusion.

Combined Authorisations

2.11 A single authorisation may combine:

- two or more different authorisations under Part II of the Law;
- a warrant for intrusive surveillance under Part II of the Law and a warrant under Section 5 of the 1994 Act.

2.12 For example, a single authorisation may combine authorisations for directed and intrusive surveillance. The provisions applicable in the case of each of the authorisations must be considered separately. Thus, a police Chief Inspector can authorise the directed surveillance but the intrusive surveillance needs the separate authorisation of the Chief Officer of Police, and in certain cases the approval of HM Procureur will also be necessary. Where an authorisation for directed surveillance or the use of conduct of a covert human intelligence source is combined with a HM Procureur authorisation for intrusive surveillance, the combined authorisation must be issued by HM Procureur. However, this does not preclude public authorities from obtaining separate authorisations.

2.13 In cases where one agency is acting on behalf of another, it is usually for the tasking agency to obtain or provide the authorisation. For example, where surveillance is carried out by Customs and Excise on behalf of the Island Police Force, authorisations would be sought by the Island Police Force and

granted by the appropriate authorising officer. In cases where the Security Service is acting in support of the police or other law enforcement agency in the field of serious crime, the Security Service would normally seek authorisations.

Central Record of all Authorisations

2.14 A centrally retrievable record of all authorisations should be held by each public authority, Customs and Excise or Island Police Force and regularly updated whenever an authorisation is granted, renewed or cancelled. The record should be made available to the Commissioner upon request. These records should be retained for a period of at least three years from the ending of the authorisation and should contain the following information:

- the type of authorisation;
- the date the authorisation was given;
- the name and rank/grade of the authorising officer;
- the unique reference number (URN) of the investigation or operation;
- the title of the investigation or operation, including a brief description and names of subjects, if known;
- whether the urgency provisions were used, and if so why.
- if the authorisation is renewed, when it was renewed and who authorised the renewal, including the name and rank/grade of the authorising officer;

- whether the investigation or operation is likely to result in obtaining confidential information as defined in this Code of Practice;
- the date the authorisation was cancelled.

2.15 In all cases, the relevant authority should maintain the following documentation which need not form part of the centrally retrievable record:

- a copy of the application and a copy of the authorisation together with any supplementary documentation and notification of the approval given by the authorising officer;
- a record of the period over which the surveillance has taken place;
- the frequency of reviews prescribed by the authorising officer;
- a record of the result of each review of the authorisation;
- a copy of any renewal of an authorisation, together with the supporting documentation submitted when the renewal was requested;
- the date and time when any instruction was given by the authorising officer.

Retention and Destruction of the Product

2.16 Where the product of surveillance could be relevant to pending or future criminal or civil proceedings, it should be retained in accordance with established disclosure requirements for a suitable further period, commensurate to any subsequent review.

- 2.17 In the cases of the law enforcement agencies (particular attention is drawn to the requirements of common law and customary law and the disclosure procedures in criminal proceedings. This requires that material which is obtained in the course of a criminal investigation and which may be relevant to the investigation must be recorded and retained.
- 2.18 There is nothing in the Law which prevents material obtained from properly authorised surveillance from being used in other investigations. Each public authority must ensure that arrangements are in place for the handling, storage and destruction of material obtained through the use of covert surveillance. Authorising officers must ensure compliance with the appropriate data protection requirements and any relevant codes of practice produced by individual authorities relating to the handling and storage of material.

3. SPECIAL RULES ON AUTHORISATIONS

- 3.1 The Law does not provide any special protection for 'confidential information'. Nevertheless, particular care should be taken in cases where the subject of the investigation or operation might reasonably expect a high degree of privacy, or where confidential information is involved. Confidential information consists of matters subject to legal privilege, confidential personal information or confidential journalistic material. So, for example, extra care should be given where, through the use of surveillance, it would be possible to acquire knowledge of discussions between a minister of religion and an individual relating to the latter's spiritual welfare, or where matters of medical or journalistic confidentiality or legal privilege may be involved.
- 3.2 In cases where through the use of surveillance it is likely that knowledge of confidential information will be acquired, it is recommended that advice is

sought from Her Majesty's Procureur, and that the use of surveillance in such circumstances is subject to a higher level of authorisation.

Communications Subject to Legal Privilege

- 3.3 Section 24 of the Police and Criminal Evidence (Bailiwick of Guernsey) Law, 2003, describes those matters and items that are usually regarded as subject to legal privilege in the Bailiwick.
- 3.4 Legal privilege does not apply to communications made with the intention of furthering a criminal purpose (whether the lawyer is acting unwittingly or culpably). Legally privileged communications will lose their protection if there are grounds to believe, for example, that the professional legal adviser is intending to hold or use them for a criminal purpose. But privilege is not lost if a professional legal adviser is properly advising a person who is suspected of having committed a criminal offence. The concept of legal privilege applies to the provision of professional legal advice by any individual, agency or organisation qualified to do so.
- 3.5 The Law does not provide any special protection for legally privileged information. Nevertheless, such information is particularly sensitive and surveillance, which acquires such material, may engage Article 6 of the European Convention on Human Rights (the right to a fair trial) as well as Article 8. Legally privileged information obtained by surveillance is extremely unlikely ever to be admissible as evidence in criminal proceedings. Moreover, the mere fact that such surveillance has taken place may lead to any related criminal proceedings being stayed as an abuse of process. Accordingly action, which may lead to such information being acquired, is subject to additional safeguards under this Code.
- 3.6 In general, an application for surveillance, which is likely to result in the acquisition of legally, privileged information should only be made in

exceptional and compelling circumstances. Full regard should be had to the particular proportionality issues such surveillance raises. The application should include, in addition to the reasons why it is considered necessary for the surveillance to take place, an assessment of how likely it is that information subject to legal privilege will be acquired. In addition, the application should clearly state whether the purpose (or one of the purposes) of the surveillance is to obtain legally privileged information.

3.7 This assessment will be taken into account by the authorising officer in deciding whether the proposed surveillance is necessary and proportionate under Section 23 of the Law for directed surveillance and under Section 26 of the same law for intrusive surveillance. The authorising officer may require regular reporting so as to be able to decide whether the authorisation should continue. In those cases where legally privileged information has been acquired and retained, the matter should be reported to HM Procureur and the Commissioner during his next inspection and the material be made available to him if requested.

3.8 A substantial proportion of the communications between a lawyer and his client(s) may be subject to legal privilege. Therefore, any case where a lawyer is the subject of an investigation or operation should be notified to HM Procureur and the Commissioner during his next inspection and any material, which has been retained, should be made available to him if requested.

3.9 Where there is any doubt as to the handling and dissemination of information which maybe subject to legal privilege, advice should be sought from a legal adviser within the Law Officers of the Crown before any further dissemination of the material takes place. Similar advice should also be sought where there is doubt over whether information is not subject to legal privilege due to the “in furtherance of a criminal purpose” exception. The retention of legally privileged information, or its dissemination to an outside

body, should be accompanied by a clear warning that it is subject to legal privilege. It should be safeguarded by taking reasonable steps to ensure there is no possibility of it becoming available, or its contents becoming known, to any person whose possession of it might prejudice any criminal or civil proceedings related to the information. Any dissemination of legally privileged material to an outside body should be notified to HM Procureur and the Commissioner during his next inspection.

Communications involving Confidential Personal Information and Confidential Journalistic Material

- 3.10 Similar consideration must also be given to authorisations that involve confidential personal information and confidential journalistic material. In those cases where confidential personal information and confidential journalistic material has been acquired and retained, the matter should be reported to HM Procureur and the Commissioner during his next inspection and the material be made available to him if requested.
- 3.11 Confidential personal information is information held in confidence relating to the physical or mental health or spiritual counselling concerning an individual (whether living or dead) who can be identified from it. Such information, which can include both oral and written communications, is held in confidence if it is held subject to an express or implied undertaking to hold it in confidence or it is subject to a restriction on disclosure or an obligation of confidentiality contained in existing legislation. Examples might include consultations between a health professional and a patient, or information from a patient's medical records.
- 3.12 Spiritual counselling means conversations between an individual and a Minister of Religion acting in his official capacity, where the individual being counselled is seeking or the Minister is imparting forgiveness,

absolution or the resolution of conscience with the authority of the Divine Being(s) of their faith.

- 3.13 Confidential journalistic material includes material acquired or created for the purposes of journalism and held subject to an undertaking to hold it in confidence, as well as communications resulting in information being acquired for the purposes of journalism and held subject to such an undertaking.

4. AUTHORISATION PROCEDURES FOR DIRECTED SURVEILLANCE

4.1 Directed surveillance is defined in Section 21(2) of the Law as surveillance which is covert, but not intrusive, and undertaken:

- (a) for the purposes of a specific investigation or 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 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 Part II of THE LAW to be sought for the carrying out of the surveillance.

4.2 Covert surveillance is defined in Section 21 (9)(a) of the Law as any surveillance, which is carried out in a manner calculated to ensure that the persons subject to the surveillance are unaware that it is or may be taking place.

- 4.3 Private information is defined in Section 21 (10) of the Law as including any information relating to a person's private or family life. The concept of private information should be broadly interpreted to include an individual's private or personal relationship with others. Family life should be treated as extending beyond the formal relationships created by marriage.
- 4.4 Directed surveillance does not include covert surveillance carried out by way of an immediate response to events or circumstances which, by their very nature, could not have been foreseen. For example, a police officer would not require an authorisation to conceal himself and observe a suspicious person that he came across in the course of a patrol.
- 4.5 By virtue of Section 69 (3) of the Law, surveillance that includes the interception of postal and telephone communications where the sender or recipient consents to the reading of or listening to or recording of the communication (as the case may be). For further details see paragraphs 4.30 – 4.32 of this Code.
- 4.6 Surveillance in residential premises or in private vehicles is defined as intrusive surveillance in Section 21 (3) of the Law and is dealt with in section 5 of this Code. However, where surveillance is carried out by a device designed or adapted principally for the purpose of providing information about the location of a vehicle, the activity is directed surveillance and should be authorised accordingly.
- 4.7 Directed surveillance does not include entry on or interference with property or with wireless telegraphy. These activities are subject to a separate regime of authorisation or warrant, as set out in section 6 of this Code.
- 4.8 Directed surveillance includes covert surveillance within office premises, (as defined in Paragraph 6.35 of this Code). Authorising officers are reminded that confidential information should be afforded an enhanced level of

protection. Section 3 of this Code provides that in cases where the likely consequence of surveillance is to acquire confidential information, the authorisation should be given at a higher level.

Authorisation Procedures

4.9 Under Section 23 (3) of the Law an authorisation for directed surveillance may be granted by an authorising officer where he believes that the authorisation is necessary in the circumstances of the particular case:

- in the interests of national security^{1 2};
- for the purpose of preventing and detecting crime³ or of preventing disorder;
- in the interests of the economic well-being of the Bailiwick;
- in the interests of public safety;
- for the purpose of protecting public health⁴ ;

¹ One of the functions of the Security Service is the protection of national security and in particular the protection against threats from international terrorism, and some of these functions will extend to the Bailiwick. An authorising officer in another public authority should not issue an authorisation under Part II of the Law where the operation or investigation falls within the responsibilities of the Security Service, except where it is a directed surveillance investigation or operation that the Security Service has agreed that another authority should carry out.

² HM Forces may also undertake operations in connection with a military threat to national security and other operations in connection with national security in support of the Security Service.

³ Detecting crime is defined in Section 67 (3) of the Law.

⁴ This could include investigations into infectious diseases, contaminated products or the illicit sale of pharmaceuticals

- for the purpose of assessing or collecting any tax, duty, levy or other imposition, contribution or charge payable to a government department;
or
- for any other purpose specified by Regulations made by the Committee⁵.

4.10 The authorising officer must also believe that the surveillance is proportionate to what it seeks to achieve.

4.11 The public authorities entitled to authorise directed surveillance are listed in Schedule 1 to the Law. Responsibility for authorising the carrying out of directed surveillance rests with the authorising officer and requires the personal authority of the authorising officer. The Regulation of Investigatory Powers (Prescription of Offices, Ranks and Positions) Regulations, 2004, designates the authorising officer for each different public authority and the officers entitled to act only in urgent cases. Where an authorisation for directed surveillance is combined with an HM Procurer authorisation for intrusive surveillance, the combined authorisation must be issued by HM Procurer.

4.12 The authorising officer must give authorisations in writing, except that in urgent cases, they may be given orally by the authorising officer or the officer entitled to act in urgent cases. In such cases, a statement that the authorising officer has expressly authorised the action should be recorded in writing by the applicant as soon as is reasonably practicable.

4.13 A case is not normally to be regarded as urgent unless the time that would elapse before the authorising officer was available to grant the authorisation would, in the judgement of the person giving the authorisation, be likely to

⁵ This could only be for a purpose, which satisfies the criteria set out in Article 8 (2) of the ECHR.

endanger life or jeopardise the investigation or operation for which the authorisation was being given. An authorisation is not to be regarded as urgent where the need for an authorisation has been neglected or the urgency is of the authorising officer's own making.

4.14 Authorising officers should not be responsible for authorising investigations or operations in which they are directly involved, although it is recognised that this may sometimes be unavoidable, especially in the case of small organisations, where it is necessary to act urgently. Where an authorising officer authorises such an investigation or operation the central record of authorisations (see Paragraphs 2.14 – 2.15) should highlight this and the attention of the Commissioner should be drawn to it during his next inspection.

4.15 Authorising officers within the Island Police Force, may only grant authorisations on application by a member of their own Force. Authorising officers in Customs and Excise may only grant an authorisation on application by a customs officer.⁶

Information to be provided in Applications for Authorisation

4.16 A written application for authorisation for directed surveillance should describe any conduct to be authorised and the purpose of the investigation or operation. The application should also include:

- the reasons why the authorisation is necessary in the particular case and on the grounds (e.g. for the purpose of preventing or detecting crime) listed in Section 23 (3) of the Law;

⁶ As defined in Section 67 (3) of the Law.

- the reasons why the surveillance is considered proportionate to what it seeks to achieve;
- the nature of the surveillance;
- the identities, where known, of those to be the subject of the surveillance;
- an explanation of the information which it is desired to obtain as a result of the surveillance;
- the details of any potential collateral intrusion and why the intrusion is justified;
- the details of any confidential information that is likely to be obtained as a consequence of the surveillance.
- the level of authority required (or recommended where that is different) for the surveillance; and
- a subsequent record of whether authority was given or refused, by whom and the time and date.

4.17 Additionally, in urgent cases, the authorisation should record (as the case may be);

- the reasons why the authorising officer or the officer entitled to act in urgent cases considered the case so urgent that an oral instead of a written authorisation was given; and/or
- the reasons why it was not reasonably practicable for the application to be considered by the authorising officer.

- 4.18 Where the authorisation is oral, the detail referred to above should be recorded in writing by the applicant as soon as reasonably practicable.

Duration of Authorisations

- 4.19 A written authorisation granted by an authorising officer will cease to have effect (unless renewed) at the end of a period of three months beginning with the day on which it took effect.
- 4.20 Urgent oral authorisations or written authorisations granted by a person who is entitled to act only in urgent cases will, unless renewed, cease to have effect after seventy-two hours, beginning with the time when the authorisation was granted or renewed.

Reviews

- 4.21 Regular reviews of authorisations should be undertaken to assess the need for the surveillance to continue. The results of a review should be recorded on the central record of authorisations (*see paragraphs 2.14 - 2.15*). Particular attention is drawn to the need to review authorisations frequently where the surveillance provides access to confidential information or involves collateral intrusion.
- 4.22 In each case the authorising officer within each public authority should determine how often a review should take place. This should be as frequently as is considered necessary and practicable.

Renewals

- 4.23 If at any time before an authorisation would cease to have effect, the authorising officer considers it necessary for the authorisation to continue for

the purpose for which it was given, he may renew it in writing for a further period of three months unless it is a case to which paragraph 4.25 applies. Renewals may also be granted orally in urgent cases and last for a period of seventy-two hours.

4.24 A renewal takes effect at the time at which, or day on which the authorisation would have ceased to have effect but for the renewal. An application for renewal should not be made until shortly before the authorisation period is drawing to an end. Any person who would be entitled to grant a new authorisation can renew an authorisation. Authorisations may be renewed more than once, provided they continue to meet the criteria for authorisation.

4.25 If at any time before an authorisation for directed surveillance, granted on the grounds of it being in the interests of national security or in the interests of the economic well-being of the Bailiwick, would cease to have effect, an authorising officer who is a member of the intelligence services considers it necessary for it to continue, may renew it for a further six months, beginning with the day on which it would have ceased to have effect but for the renewal.

4.26 All applications for the renewal of an authorisation for directed surveillance should record:

- whether this is the first renewal or every occasion on which the authorisation has been renewed previously;
- any significant changes to the information in paragraph 4.16;
- the reasons why it is necessary to continue with the directed surveillance;

- the content and value to the investigation or operation of the information so far obtained by the surveillance;
- the results of regular reviews of the investigation or operation.

4.27 Authorisations may be renewed more than once, if necessary and the renewal should be kept/recorded as part of the central record of authorisations (*see paragraphs 2.14 – 2.15*).

Cancellations

4.28 The authorising officer who granted or last renewed the authorisation must cancel it if he is satisfied that the directed surveillance no longer meets the criteria upon which it was authorised. Where the authorising officer is no longer available, this duty will fall on the person who has taken over the role of authorising officer or the person who is acting as authorising officer. (*See The Regulation of Investigatory Powers (Cancellation of Authorisations) Regulations, 2004*).

Ceasing of Surveillance Activity

4.29 As soon as the decision is taken that directed surveillance should be discontinued, the instruction must be given to those involved to stop all surveillance of the subject(s). The date and time when such an instruction was given should be recorded in the central record of authorisations (*see paragraphs 2.14 – 2.15*) and the notification of cancellation where relevant.

ADDITIONAL RULES

Recording of Telephone Conversations

4.30 Subject to paragraph 4.31 below, the interception of communications sent by post or by means of public telecommunication systems or private

telecommunications systems attached to the public network may be authorised only by HM Procureur, in accordance with the terms of Part I of the Law. Nothing in this Code should be taken as granting dispensation from the requirements of that Part of the Law.

4.31 Part I of the Law provides certain exceptions to the rule that interception of telephone conversations must be warranted under that Part. This includes the situation where one party to the communication consents to the interception, and it may be authorised in accordance with section 69 (3) of the Law provided that there is no interception warrant authorising the interception. In such cases, the interception is treated as directed surveillance.

4.32 The use of a surveillance device should not be ruled out simply because it may incidentally pick up one or both ends of a telephone conversation, and any such product can be treated as having been lawfully obtained. However, its use would not be appropriate where the sole purpose is to overhear speech which, at the time of monitoring, is being transmitted by a telecommunications system. In such cases an application should be made for an interception of communication warrant under section 5 of the Law.

5. AUTHORISATION PROCEDURES FOR INTRUSIVE SURVEILLANCE

5.1 Intrusive surveillance is defined in Section 21(3) of the Law as 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.

- 5.2 Covert surveillance is defined in Section 21 (9)(a) of the Law as any surveillance, which is carried out in a manner calculated to ensure that the persons subject to the surveillance are unaware that it is or may be taking place.
- 5.3 Where surveillance is carried out in relation to anything taking place on any residential premises or in any private vehicle by means of a device, without that device being present on the premises, or in the vehicle, it is not intrusive unless the device 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. Thus, an observation post outside premises, which provides a limited view and no sound of what is happening inside the premises would not be considered as intrusive surveillance.
- 5.4 Residential premises are defined in Section 67(3) of the Law. The definition includes any premises as is for the time being occupied or used by any person, however temporarily, for residential purposes or otherwise as accommodation (including hotel or prison accommodation that is so occupied or used) but not any common area to which a person is allowed access in connection with his occupation of such accommodation e.g. a hotel lounge.
- 5.5 A private vehicle is defined in Section 67(3) of the Law as any vehicle, which is used primarily for the private purposes of the person who owns it or of a person otherwise having the right to use it. A person does not have a right to use a motor vehicle if his right to use it derives only from his having paid, or undertaken to pay, for the use of the vehicle and its driver for a particular journey.
- 5.6 In many cases, a surveillance investigation or operation may involve both intrusive surveillance and entry on or interference with property or with

wireless telegraphy. In such cases, both activities need authorisation. This can be done as a combined authorisation (see paragraph 2.11).

- 5.7 An authorisation for intrusive surveillance may be issued by HM Procureur (for the intelligence services, the Ministry of Defence, HM Forces and any other public authority designated under section 33 (1) of the Law) or by a senior authorising officer (for the Island Police, and Customs and Excise).
- 5.8 All authorisations for intrusive surveillance require the personal authority of HM Procureur or a senior authorising officer. A senior authorising officer may grant certain senior officers within the same public authority, who must be at least of the ranks specified in regulations made under section 28(1) of the Law, the power to act on his behalf in granting authorisations for intrusive surveillance. Throughout this section, the phrase 'senior authorising officer' includes such senior officers.
- 5.9 Special rules apply for Intelligence Services authorisations. Members or officials of the Intelligence Services, the Ministry of Defence and HM Forces can apply to HM Procureur for an intrusive surveillance warrant under the Law. An authorisation under section 33 of the Law for the carrying out of intrusive surveillance, or the renewing of an application to conduct intrusive surveillance, shall only be granted by the hand of HM Procureur as described in section 35 (1) of the Law
- 5.10 Under Section 26 (2) of the Law neither the HM Procureur or the senior authorising officer may authorise intrusive surveillance unless he believes –
- a) that the authorisation is necessary in the circumstances of the particular case on the grounds that it is:

- in the interests of national security;⁷
- for the purpose of preventing or detecting serious crime; or
- in the interests of the economic well-being of the Bailiwick;

and

- b) he must also believe that the surveillance is proportionate to what it seeks to achieve.

5.10 A factor that must be taken into account in deciding whether an authorisation is necessary and proportionate is whether the information, which it is thought necessary to obtain by means of the intrusive surveillance could reasonably be obtained by other less intrusive means.

Authorisation Procedures for Police, Customs and Excise, and the Intelligence Services.

5.11 Authorisations should generally be given in writing. However, in urgent cases, they may be given orally. In an urgent oral case, a statement that the conduct has been approved and expressly authorised by the senior authorising officer (or the person entitled to act on his behalf) should be recorded in writing as soon as is reasonably practicable.

5.12 Officers of the rank of at least Superintendent in the Island Police, and of at least the Head of Law Enforcement in the Customs and Excise may also act on behalf of the senior authorising officer and grant an authorisation for

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A senior authorising officer of a law enforcement agency should not issue an authorisation for intrusive surveillance or entry on or interference with property or with wireless telegraphy where the operation is within the responsibilities of one of the Intelligence services and properly falls to be authorised by warrant issued by HM Procureur under Part II of the Law. Also see footnotes 1 and 2.

intrusive surveillance, as provided for by the Regulation of Investigatory Powers (Prescription of Offices, Ranks and Positions), Regulations, 2004 made under section 28 (1) of the Law. Such an authorisation can be given in writing or, in urgent cases, orally.

- 5.13 In an urgent case, where it is not reasonably practicable having regard to the urgency of the case for the either the senior authorising officer or the person entitled to act on his behalf to consider the application, a written authorisation may be granted by an officer of at least the rank of Chief Inspector in the Island Police, or of at least Deputy Head of Law Enforcement in the Customs and Excise, as provided in the Regulations made under Section 28 (1) of the Law.
- 5.14 A case is not normally to be regarded as urgent unless the time that would elapse before the senior authorising officer was available to grant the authorisation would, in the judgement of the person giving the authorisation, be likely to endanger life or jeopardise the investigation or operation for which the authorisation was being given. An authorisation is not to be regarded as urgent where the need for an authorisation has been neglected or the urgency is of the authorising officer's own making.
- 5.15 The consideration of an authorisation by the senior authorising officer is only to be regarded as not reasonably practicable if he is on annual leave, is absent from his office and his home, or is for some reason not able within a reasonable time to obtain access to a secure telephone or fax machine. Pressure of work is not normally to be regarded as rendering it impracticable for a senior authorising officer to consider an application. Where any person other than a senior authorising officer gives an authorisation this should be made clear and the reason for the absence of the senior authorising officer given.

5.16 A Police authorisation cannot be granted unless the application is made by a member of the same force. For Customs and Excise, an authorisation cannot be granted unless the application is made by a customs officer. Where the surveillance is carried out in relation to any residential premises, the authorisation cannot be granted unless the residential premises are within the Bailiwick.

Information to be Provided in applications for Authorisation

5.17 Applications should be in writing and describe the conduct to be authorised and the purpose of the investigation or operation. The application should specify:

- the reasons why the authorisation is necessary in the particular case and on the grounds (e.g. for the purpose of preventing or detecting serious crime) listed in section 26 (3) of the Law;
- the reasons why the surveillance is considered proportionate to what it seeks to achieve;
- the nature of the surveillance;
- the residential premises or private vehicle in relation to which the surveillance will take place;
- the identities, where known, of those to be the subject of the surveillance;
- an explanation of the information which it is desired to obtain as a result of the surveillance;

- details of any potential collateral intrusion and why the intrusion is justified;
- details of any confidential information that is likely to be obtained as a consequence of the surveillance;
- a subsequent record should be made of whether authority was given or refused, by whom, and the time and date.

5.18 Additionally, in urgent cases, the authorisation should record (as the case may be):

- the reasons why the authorising officer considered the case so urgent that an oral instead of a written authorisation was given; and/or
- the reasons why it was not reasonably practicable for the application to be considered by the senior authorising officer.

5.19 Where an application is oral, the detail referred to above should be recorded in writing as soon as reasonably practicable.

Approval of HM Procureur

5.20 Except in urgent cases an Island Police or Customs and Excise authorisation granted for intrusive surveillance will not take effect until it has been approved by HM Procureur and written notice of HM Procureur's decision has been given to the person who had granted the authorisation. This means that the approval will not take effect until the notice has been received in the office of the person who granted the authorisation for the Island Police Force or Customs and Excise.

- 5.21 When the authorisation is urgent it will take effect from the time it is granted provided notice is given to HM Procureur in accordance with section 29 of the Law (*see section 30(3) of THE LAW*).
- 5.22 There may be cases that become urgent after approval has been sought but before a response has been received from HM Procureur. In such a case, the authorising officer should notify HM Procureur that the case is now urgent (pointing out that it has become urgent since the notification). In these cases, the authorisation will take effect immediately.

Notification to HM Procureur

- 5.23 Where a person grants, renews or cancels an authorisation, he must, as soon as is reasonably practicable, give notice in writing to HM Procureur, in accordance with whatever arrangements have been made by HM Procureur and must specify such matters as the Committee may by regulation prescribe.
- 5.24 In urgent cases, the notification must specify the grounds on which the case is believed to be one of urgency. The urgency provisions should not be used routinely. If HM Procureur is satisfied that there were no grounds for believing the case to be one of urgency, he has the power to quash the authorisation.
- 5.25 The information to be included in the notification to HM Procureur is set in The Regulation of Investigatory Powers (Notification of Authorisations) Regulations, 2004.

Authorisation Procedures for HM Procureur Authorisations

- 5.26 An intrusive surveillance authorisation for any of the Intelligence Services, the Ministry of Defence, HM Forces or any other public authority designated

for this purpose requires a HM Procureur authorisation, unless they are acting on behalf of another public authority that has already obtained an authorisation.

- 5.28 Applications to HM Procureur for authorisations should specify those matters listed in paragraph 5.16.

All Intrusive Surveillance Authorisations

- 5.29 Paragraphs 5.30 to 5.43 deal with the duration, renewal and cancellation of authorisations. Unless otherwise specified the guidance below applies to all authorisations.

Duration of Authorisations

- 5.30 A written authorisation granted by HM Procureur (except for Intelligence Service authorisations - see paragraph 5.32) or a senior authorising officer will cease to have effect (unless renewed) at the end of a period of three months, beginning on the day on which it took effect.
- 5.31 Oral authorisations given in urgent cases by a senior authorising officer or designated deputies, and written authorisations given by those only to act in urgent cases (see paragraph 5.11), will cease at the end of a period of seventy-two hours beginning with the time when it took effect.
- 5.32 A warrant issued by HM Procureur in respect of an Intelligence Service application will cease to have effect at the end of a period of six months beginning with the day it was issued.

Renewals - General

- 5.33 If at any time before an authorisation expires the senior authorising officer considers the authorisation should continue to have effect for the purpose for which it was issued, he may renew it in writing for a further three months.
- 5.34 As with the initial authorisation, the senior authorising officer must (unless it is a case to which the urgency procedure applies) seek the approval of HM Procurer. This means that the renewal will not take effect until notice of it has been received in the office of the person who granted that authorisation (but not before the day on which the authorisation would have otherwise ceased to have effect). In urgent cases, a renewal can take effect immediately (provided this is not before the day on which the authorisation would otherwise ceased to have effect). See sections 29 and 30 of the Law and the Regulation of Investigatory Powers (Notification of Authorisations) Regulations, 2004.
- 5.35 Subject to paragraph 5.36, if at any time before the day on which a HM Procurer authorisation expires, HM Procurer considers it necessary for the warrant to be renewed for the purpose for which it was issued, he may renew it in writing for a further period of three months, beginning with the day on which it would have ceased to have effect, but not for renewal.
- 5.36 If at any time before an intelligence service warrant expires, HM Procurer considers it necessary for the warrant to be renewed for the purpose for which it was issued, he may renew it in writing for a further period of six months, beginning with the day on which it would have ceased to have effect, but for the renewal.

Renewals – All Applications

- 5.37 All applications for a renewal of an authorisation or a warrant should record;

- whether this is the first renewal or every occasion on which the warrant/authorisation has been renewed previously;
- any significant changes to the information listed in paragraph 5.16
- the reasons why it is necessary to continue with the intrusive surveillance;
- the content and value to the investigation or operation of the product so far obtained by the surveillance;
- the results of regular reviews of the investigation or operation.

5.38 Authorisations may be renewed more than once, if necessary, and the renewal should be kept/ recorded as part of the central record of authorisations (*see paragraph 2.14 and 2.15*)

Reviews

5.39 Regular reviews of authorisations should be undertaken to assess the need for the surveillance to continue. The results of the reviews should be recorded on the central record of authorisations (*see paragraph 2.14 and 2.15*). Particular attention is drawn to the need to review authorisations frequently where the intrusive surveillance provides access to confidential information or involves collateral intrusion.

5.40 The senior authorising officer or, for those subject to HM Procurer authorisation, the member or official who made the application within each public authority should determine how often a review should take place. This should be as frequently as it is considered necessary and practicable.

Cancellations

5.41 The senior authorising officer who granted or last renewed the authorisation must cancel it, or the person who made the application to HM Procureur must apply for the cancellation, if he is satisfied that the surveillance no longer meets the criteria upon which it was authorised. Where the senior authorising officer or person who made application to HM Procureur is no longer available, this duty will fall on the person who has taken over the role of senior authorising officer or taken over from the person who made the application to HM Procureur or the person who is acting as the senior authorising officer. (The Regulation of Investigatory Powers (Cancellation of Authorisations) Regulations 2004).

5.42 HM Procureur must be notified where Police or Customs and Excise authorisations are cancelled (The Regulation of Investigatory Powers (Notification of Authorisations) Regulations, 2004).

Ceasing of Surveillance Activity

5.43 As soon as the decision is taken that the intrusive surveillance should be discontinued, instruction must be given to those involved to stop all surveillance of the subject(s). The date and time when such an instruction was given should be recorded in the central record of authorisations (see paragraph 2.14 and 2.15) and the notification of cancellation where relevant.

Where a Police or Customs and Excise Authority is Quashed by HM Procureur

5.44 In cases where an authorisation is quashed or cancelled by HM Procureur, the senior authorising officer must immediately instruct those carrying out the surveillance to stop monitoring, observing, listening or recording the activities of the subject(s) of the authorisation. The date and time when such

an instruction was given should be recorded on the central record of authorisations (see paragraph 2.14 and 2.15).

6. AUTHORISATION PROCEDURES FOR ENTRY ON OR INTERFERENCE WITH PROPERTY OR WITH WIRELESS TELEGRAPHY

6.1 Sections 39 to 45 of the Law (Part II, Chapter II) provide lawful authority for entry on or interference with property or with wireless telegraphy by the Police, Customs and Excise and the Intelligence Services,.

6.2 In many cases a covert surveillance operation may involve both intrusive surveillance and entry on or interference with property or with wireless telegraphy. This can be done as a combined authorisation although the criteria for authorisation of each activity must be considered separately (see paragraph 2.11).

Authorisations for Entry on or Interference with Property or with Wireless Telegraphy by, the Police, Customs and Excise and the Intelligence Services

6.3 Responsibility for such authorisations rests with HM Procureur. However, in the circumstances set out in section 41(1), the Law provides that other persons are entitled to act. In those situations, an officer of not less than Chief Inspector in the Island Police, or of the rank of Surveyor in Customs and Excise, may authorise action in respect of entry on or interference with property or with wireless telegraphy (see section 41(2) and the Regulation of Investigatory Powers (Prescription of Offices, Ranks and Positions) Regulations, 2004). The circumstances set out in section 41 are -

- in cases of urgency; or

- where it is not reasonably practicable for the application to be considered by HM Procureur; or
- in such other circumstances as HM Procureur directs.

6.4 Authorisations under the Law may not be necessary where the public authority is acting with the consent of a person able to give permission in respect of relevant property, although consideration should still be given to the need to obtain an authorisation under chapter I of Part II of the Law.

6.5 Authorisations of the Police under the section 41 provisions may only be given by an authorising officer on application by a member of his own Force for entry on or interference with property or with wireless telegraphy within the Bailiwick. For Customs and Excise an authorisation may only be given by an authorising officer on application by a customs officer.

6.6 When giving an authorisation for entry on or interference with property or with wireless telegraphy under sections 40 and 41 of the 2003 Law”, HMP or the authorising officer must believe that:

- it is necessary for the action specified to be taken for the purpose of preventing or detecting serious crime or in the interest of national security;

and

- that the taking of the action is proportionate to what the action seeks to achieve.

6.7 The person granting authorisation for action under Chapter II, Part II must take into account whether what it is thought necessary to achieve by the authorised conduct could reasonably be achieved by other means.

6.8 Any person granting or applying for an authorisation or warrant to enter on or interfere with property or with wireless telegraphy will also need to be aware of particular sensitivities in the local community where the entry or interference is taking place and of similar activities being undertaken by other public authorities which could impact on the deployment. In this regard, it is recommended that the authorising officers of Customs and Excise and Island Police Force consult appropriately with other law enforcement agencies where one or other authorising officer considers that conflicts might arise.

Authorisation Procedures for Entry on or Interference with Property or with Wireless Telegraphy by the Police and Customs and Excise.

6.9 Authorisations will generally be given in writing. However, in urgent cases, they may be given orally by HM Procureur or the authorising officer. In such cases, a statement that the action has been expressly authorised should be recorded in writing by the applicant as soon as is reasonably practicable. This should be done by the person with whom HM Procureur or the authorising officer spoke.

6.10 Applications for authorisation must be made in writing by a Police or Customs Officer and should specify:

- the identity or identities of those to be targeted (where known);
- the property which the entry or interference with will affect;
- the identity of individuals and/or categories of people, where known, who are likely to be affected by collateral intrusion;
- details of the offence planned or committed;

- details of the intrusive surveillance involved;
- how the authorisation criteria (as set out in paragraphs 6.6 and 6.7) have been met;
- any action which may be necessary to retrieve any equipment used in the surveillance;
- in case of a renewal, the results obtained so far, or a full explanation of the failure to obtain any results; and
- whether an authorisation was given or refused, by whom and the time and date.

6.11 Additionally, in urgent cases, the record should include (as the case may be):

- the reasons why the authorising officer considered the case so urgent that an oral instead of a written authorisation was given; and
- the reasons why (if relevant) the person granting the authorisation did not consider it reasonably practicable for the application to be considered by HM Procurer.

6.12 Where the application is oral, the information referred to above should be recorded in writing by the applicant as soon as reasonably practicable.

Notifications to HM Procurer

6.13 Where a person gives, renews or cancels an authorisation by virtue of section 41 of the Law, he must, as soon as reasonably practicable, give notice of it in writing to HM Procurer, in accordance with arrangements

made by HM Procureur. The notification must specify the grounds on which the case is believed to fall within the provisions of section 41. Where notice of an authorisation under section 41 is given to HM Procureur, he will consider the notice and decide whether to approve the authorisation or refuse his approval. HM Procureur will notify the authorising officer of his decision and the authorisation will take effect from the time of its grant.

- 6.14 Notifications to HM Procureur in relation to the authorisation, renewal and cancellation of authorisations in respect of entry on or interference with property should be in accordance with the requirements of The Regulation of Investigatory Powers (Notification of Authorisations) Regulations, 2004.

Duration of Authorisations

- 6.15 Written authorisations given by HM Procureur will cease to have effect at the end of a period of **three months** beginning with the day on which they took effect. This means from the time HM Procureur has approved the authorisation.

- 6.16 Authorisations given orally or by virtue of section 41 will cease at the end of the period of **seventy-two hours** beginning with the time when they took effect.

Renewals

- 6.17 If at any time before the day on which an authorisation expires HM Procureur considers the authorisation should continue to have effect for the purpose for which it was issued, he may renew it in writing for a period of **three months** beginning with the day on which the authorisation would otherwise have ceased to have effect. Authorisations may be renewed more than once, if necessary, and the renewal should be recorded on the authorisation record (see paragraph 6.26).

6.18 An application to HM Procureur to renew an authorisation should contain the following information -

- (a) whether the authorisation is being renewed for the first time, or, where it has been previously renewed, each occasion on which it has been renewed;
- (b) every respect in which the information provided in the previous application or notice has changed;
- (c) the reason why it is considered to be necessary to renew the authorisation;
- (d) the content, and value to the investigation, of the information obtained to date by the conduct authorised;
- (e) the results of any reviews of the authorisation; and
- (f) the period for which the authorisation is considered likely to continue to be necessary.

Reviews

6.19 Authorisations should be regularly reviewed to assess the need for the entry on or interference with property or with wireless telegraphy to continue. This should be recorded on the authorisation record (see paragraph 6.26). HM Procureur or the authorising officer should determine how often a review should take place when giving an authorisation. This should be as frequently as is considered necessary and practicable and at no greater intervals than one month. Particular attention is drawn to the need to review authorisations and renewals regularly and frequently where the entry on or

interference with property or with wireless telegraphy provides access to confidential information or involves collateral intrusion.

Cancellations

6.20 The authorising officer who granted the authorisation under section 41 or the person who made the application to HM Procureur must apply for its cancellation, if he is satisfied that the authorisation no longer meets the criteria upon which it was authorised. Where the person who made the application to HM Procureur is no longer available, this duty will fall on the person who has taken over the role from the person who made the application to HM Procureur or the person who is acting as the authorising officer (The Regulation of Investigatory Powers (Cancellation of Authorisations) Regulations, 2004).

6.21 HM Procureur has the power to cancel an authorisation if he is satisfied that, at any time after an authorisation was given or renewed, there were no reasonable grounds for believing the matters set out in Paragraphs 6.6 and 6.7 above. In such circumstances, HM Procureur may order the destruction of records, in whole or in part, other than any that are required for pending criminal or civil proceedings.

Authorisation Record

6.22 An authorisation record should be created which records:

- the time and date when an authorisation is given;
- whether an authorisation is in written or oral form;
- the time and date when it was notified to HM Procureur, if appropriate;

- and the time and date when HM Procureur notified his approval (where appropriate).

The authorisation record should also record:

- every occasion when entry on or interference with property or with wireless telegraphy has occurred;
- the result of periodic reviews of the authorisation;
- the date of every renewal; and
- it should record the time and date when any instruction was given by HM Procureur or the authorising officer to cease the interference with property or with wireless telegraphy.

Ceasing of Entry on or Interference with Property or with Wireless Telegraphy

6.23 Once an authorisation or renewal expires or is cancelled or quashed, HM Procureur or the authorising officer must immediately instruct those carrying out the surveillance to cease all the actions authorised for the entry on or interference with property or with wireless telegraphy. The time and date when such an instruction was given should be recorded on the authorisation record (see Paragraph 6.26).

Retrieval of Equipment

6.24 Where HM Procureur quashes or cancels an authorisation or renewal, he will, if there are reasonable grounds for doing so, order that the authorisation remains effective for a specified period, to enable officers to retrieve anything left on the property by virtue of the authorisation. He can only do so if the authorisation or renewal makes provision for this.

- 6.25 Because of the time it can take to remove equipment from a person's property, it may also be necessary to renew a property warrant in order to complete the retrieval. Applications to HM Procureur for renewal should state why it is being or has been closed down, why it has not been possible to remove the equipment and the time scales for removal, where known.
- 6.26 It is the duty of any person who uses the powers granted by such authorisations to comply with any request made by HM Procureur to disclose or provide any information he requires for the purpose of enabling him to carry out his functions.

Special situations

6.27 There are certain circumstances where special care must be used in considering or granting an authorisation under Chapter II, Part II of the Law. These are cases where the person granting the authorisation believes that :

- any of the property specified in the authorisation:
 - is used wholly or mainly as a dwelling or as a bedroom in a hotel;
or
 - constitutes office premises; or
- the action authorised is likely to result in any person acquiring knowledge of:
 - matters subject to legal privilege;
 - confidential personal information; or
 - confidential journalistic material.

6.28 Office premises are defined as being any building or part of a building whose sole or principal use is as an office or for office purposes (which means

purposes of administration, clerical work, handling of money and telephone or telegraphic operation).

7 INDEPENDANT SCRUTINY

- 7.1 The Law provides for a Commissioner (with the assistance of Assistant Commissioners if necessary) whose remit is to provide independent oversight of the use of the powers contained within Part II of the Law.
- 7.2 This Code does not cover the exercise of the Commissioner's functions. However, it will be the duty of any person who uses any of the powers contained in Part II of the Law to comply with any request made by the Commissioner to provide any information as he requires for the purpose of enabling him to discharge his functions.
- 7.3 References in this Code to the performance of review functions by the Commissioner apply also to Assistant Commissioners and to members of staff to whom such functions have been delegated.

8 COMPLAINTS

- 8.1 The Law establishes an independent Tribunal. This Tribunal will be made up of senior members of the judiciary and the legal profession and is independent of the States of Deliberation or any Committee, Department or public administrative body in the Bailiwick. The Tribunal has full powers to investigate and decide any case within its jurisdiction.

This Code does not cover the exercise of the Tribunal's functions. Details of the relevant complaints procedure can be obtained from the following address:

**The Secretary to the Tribunal,
Investigatory Powers Tribunal,
PO Box 82,
Guernsey
GY1 4BR.**