

STATES OF JERSEY



DRAFT POLICE PROCEDURES AND CRIMINAL EVIDENCE (JERSEY) LAW 2003 (APPOINTED DAY) (No. 4) ACT 200-

**Lodged au Greffe on 2nd February 2007
by the Minister for Home Affairs**

STATES GREFFE



Jersey

DRAFT POLICE PROCEDURES AND CRIMINAL EVIDENCE (JERSEY) LAW 2003 (APPOINTED DAY) (No. 4) ACT 200-

REPORT

This Appointed Day Act would bring into effect Part 11 of the Police Procedures and Criminal Evidence (Jersey) Law 2003 (“PPCE”) which allows for authorization of covert entry upon and interference with property or with wireless telegraphy by the Police, Customs, the intelligence services and armed forces.

The provisions of this Part are the last piece in the statutory jigsaw for authorization of interception of communications and other forms of covert and intrusive surveillance, including interference with property, which was largely established by the Regulation of Investigatory Powers (Jersey) Law 2005 (“RIPL”) and is made necessary by the introduction of the Human Rights (Jersey) Law 2000.

Part 11 of PPCE has not been brought into force before now due to the need to have in place the provisions of ‘RIPL’ which cover the process for obtaining authorizations and confer on the Investigatory Powers Tribunal the responsibility for regulating the use of these powers.

Part 11 of PPCE therefore needs to be read with Paragraph 5 of Schedule 4 to RIPL, which makes amendments to the provisions of that Part as originally enacted.

A consolidated version of Part 11 of PPCE including these changes is annexed to this Report for the information of States Members.

In essence, the purpose of Part 11 of PPCE is to put the authorization of the use of intrusive surveillance in the form of interference with property or wireless telegraphy for law enforcement purposes on a statutory basis, enabling such activities to be carried out in a way which is compatible with the Human Rights Convention, particularly Article 8 of the Convention, which guarantees the right to respect for a persons’ private and family life, home and correspondence. This right can only be lawfully interfered with for limited purposes specified in the Article, and in accordance with law, and provided that the degree of interference is proportionate.

Similar provisions have been in force in the United Kingdom since 1999 when Part III of the Police Act 1997 came into force, largely to meet the “astonishment” expressed by Lord Nolan in the House of Lords in R -v- Khan (Sultan) (1997) AC 558 at the lack of a statutory system for regulating the use of surveillance devices by the police.

As amended, the provisions of Part 11 will enable the Police and the other agencies listed in Article 101(1A) to apply to the Attorney General for an authorization to use intrusive surveillance which involves entry onto or interference with, property or wireless telegraphy.

This type of activity can involve a very serious interference with a person's private and family life and thus it needs to be carefully scrutinised and regulated and available to the law enforcement agencies only when fully justified.

An authorization can, therefore only be granted –

- (a) by the Attorney General;
- (b) to the listed agencies;
- (c) if it is related to an investigation into serious crime (as defined in Article 101(5)) or the security of the Island; and;
- (d) if the Attorney is satisfied that the action proposed would be proportionate.

All forms of covert surveillance which do not involve entry into or interference with property or wireless telegraphy will be authorized under RIPL.

Financial and manpower implications

Article 104 of the PPCE requires the Bailiff to appoint one of the Judges of the Court of Appeal as a Commissioner. It is anticipated that the Bailiff will appoint the same Judge as is appointed as Commissioner under RIPL. This will avoid duplication and reduce the resource implication of bringing Part II into force to a minimum.

“PART 11

CONTROL OF INTRUSIVE SURVEILLANCE

99 Interpretation of Part 11

In this Part –

“authorization” means an authorization under Article 101;

“interference” in relation to wireless telegraphy, means the prejudicing by any emission or reflection of electro-magnetic 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, and the expression “interfere” shall be construed accordingly;

“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 –

- (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.

100 Authorizations

No entry on or interference with property or with wireless telegraphy shall be unlawful if it is authorized by an authorization having effect under this Part.

101 Authorizations to interfere with property etc.

- (1) Where paragraph (2) applies, the Attorney General [, on an application made by a person mentioned in paragraph (1A),] may authorize –
 - (a) the taking of any action, in respect of any property, as he may specify; or
 - (b) the taking of any action as he may specify, in respect of wireless telegraphy.
- [(1A) An application for an authorization under this Part may only be made by –
- (a) the Chief Officer;

- (b) the Agent of the Impôts;
 - (c) the Chief Immigration Officer;
 - (d) any member of the intelligence services;
 - (e) any official of the Ministry of Defence of the Government of the United Kingdom; or
 - (f) a member of Her Majesty's Forces.]
- (2) This paragraph applies where the Attorney General 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 the security of the Island; and
 - (b) that the taking of the action is proportionate to what the action seeks to achieve.
- (3) The matters to be taken into account in considering whether the requirements of paragraph (2) are satisfied in the case of any authorization shall include whether what it is thought necessary to achieve by the authorized action could reasonably be achieved by other means.
- [(4) The Minister may by Order –
- (a) authorize the Chief Officer, the Agent of the Impôts or the Chief Immigration Officer to delegate the power, under paragraph (1A), to make an application under this Article to, respectively, a member of the Force, an officer of the Impôts or an immigration officer of a rank or seniority specified in the Order; and
 - (b) impose any such conditions as he or she thinks fit upon the exercise of any power of delegation so conferred.
- (5) In this Article –
- ‘Chief Immigration Officer’ and ‘immigration officer’ have the same meaning as the Regulation of Investigatory Powers (Jersey) Law 2005;
- ‘intelligence services’ has the same meaning as in the Regulation of Investigatory Powers (Jersey) Law 2005;
- ‘serious crime’ means conduct which constitutes one or more offences –
- (a) which involve the use of violence, results in substantial financial gain or is conducted by a large number of persons in pursuit of a common purpose; or
 - (b) for which a person who has attained the age of 21 and has no previous convictions could reasonably be expected to be sentenced to imprisonment for 3 years or more,
- and references 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 or her service with the Royal Navy Regulating Branch, the Royal Military Police or the Royal Air Force Police.]

102 Authorizations: form and duration etc.

- (1) An authorization shall be in writing, except that in an urgent case an authorization may be given orally.
- (2) An authorization shall, unless renewed under paragraph (3), cease to have effect –
 - (a) if given orally, 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 3 months beginning with the day on which it took effect.
- (3) If at any time before an authorization would cease to have effect the Attorney General considers it necessary for the authorization to continue to have effect for the purpose for which it was issued, he may, in writing, renew it for a period of 3 months beginning with the day on which it would cease to have effect.
- (4) The Attorney General shall cancel an authorization given by him if satisfied that the action authorized by it is no longer necessary.

103 Notification of authorizations etc.

The Attorney General shall from time to time and, in any event, at least every 12 months, notify the Commissioner, in writing, of authorizations given, renewed or cancelled by him and, where an authorization was given orally, of the grounds on which the case was believed to be urgent.

104 The Commissioner

- (1) The Bailiff shall appoint one of the ordinary judges of the Court of Appeal as a Commissioner to keep under review the carrying out by the Attorney General of the functions conferred on him by this Part.
- (2) The Commissioner shall hold office in accordance with the terms of his appointment, and there shall be paid to him out of money provided by the States any allowances that the Finance and Economics Committee direct.
- (3) As soon as practicable after the end of each year, the Commissioner shall make a report to the Bailiff with respect to the carrying out of his functions under this Part.
- (4) The Bailiff shall cause a copy of every annual report under paragraph (3) to be laid before the States, and every copy shall include a statement as to whether any matter has been excluded from it in pursuance of paragraph (5).
- (5) If it appears to the Bailiff, after consultation with the Commissioner, that the publication of any matter in an annual report under paragraph (4) would be prejudicial to [any of the purposes for which authorizations may be given or granted under this Part of this Law or Part 3 of the Regulation of Investigatory Powers (Jersey) Law 2005], the Bailiff may exclude that matter from the copy of the report laid before the States.

- [(6) The Commissioner shall give the Investigatory Powers Tribunal established under Article 46(1) of the Regulation of Investigatory Powers (Jersey) Law 2005 all such assistance (including the Commissioner's opinion as to any issue falling to be determined by that Tribunal) as that Tribunal may require –
- (a) in connection with the investigation of any matter by that Tribunal;
or
 - (b) otherwise for the purposes of that Tribunal's consideration or determination of any matter.]”

NOTE: the amendments to Part 11 of the Police Procedures and Criminal Evidence (Jersey) Law 2003 that are made by the Regulation of Investigatory Powers (Jersey) Law 2005 are shown in square brackets.

Explanatory Note

This Act would bring into force Part 11 of the Police Procedures and Criminal Evidence (Jersey) Law 2003 7 days after this Act is made. Part 11 empowers the Attorney General to authorize entry on, or interference with, property or with wireless telegraphy for the purpose of preventing or detecting serious crime in Jersey or in the interests of the security of Jersey.

The Police Procedures and Criminal Evidence (Jersey) Law 2003 (P.89/2002) was adopted by the States on 5th November 2002.



Jersey

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Made

[date to be inserted]

Coming into force

[date to be inserted]

THE STATES, in pursuance of Article 114(2) of the Police Procedures and Criminal Evidence (Jersey) Law 2003¹, have made the following Act –

1 Part 11 of Law commenced

Part 11 of the Police Procedures and Criminal Evidence (Jersey) Law 2003 shall come into force 7 days after the day this Act is made.

2 Citation

This Act may be cited as the Police Procedures and Criminal Evidence (Jersey) Law 2003 (Appointed Day) (No. 4) Act 200-.

¹ *chapter 23.750*