

STATES OF JERSEY

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DRAFT TERRORISM (AMENDMENT) (JERSEY) LAW 200-

**Lodged au Greffe on 9th August 2005
by the Home Affairs Committee**

STATES GREFFE



Jersey

DRAFT TERRORISM (AMENDMENT) (JERSEY) LAW 200-

European Convention on Human Rights

The President of the Home Affairs Committee has made the following statement –

In the view of the Home Affairs Committee the provisions of the Draft Terrorism (Amendment) (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Senator W. Kinnard**

REPORT

Paragraph 4 of Schedule 5 to the Terrorism (Jersey) Law 2002 provides power for the States Police when investigating a terrorism case, to apply to the Royal Court (*i.e.* the Bailiff or Deputy Bailiff and two Jurats) for an order (called a “production order”) requiring a person who appears to be in possession of material of substantial value to the investigation to produce it to the Police. Paragraph 6 of the same Schedule makes similar provision in relation to requiring persons to provide an explanation of material seized under a search warrant granted under Paragraph 1 of the Schedule or a production order made under paragraph 4 of that Schedule.

In the United Kingdom, and in Guernsey, the equivalent provisions of the terrorism legislation confer the power to make production orders or explanation orders on a judge sitting alone and in Chambers (in the U.K., a Circuit judge, in Guernsey, the Bailiff).

Similar provisions in the Prevention of Terrorism (Jersey) Law 1996 (which the 2002 Law replaces) conferred this power on the Bailiff and Article 40 of the Proceeds of Crime (Jersey) Law 1999 also confers a similar power on the Bailiff alone, rather than on the Royal Court.

Practical experience in terrorist investigations under the 2002 Law has proved how inappropriate it is for the Court to deal with these matters, because of necessity, they are urgent and confidential and will usually need to be dealt with in Chambers, yet under the 2002 Law the Court must sit in public, at least for the beginning of the proceedings, and it is, obviously, more difficult to convene a Court with at least two Jurats, than to convene the Bailiff to sit alone. Due to the confidential nature of the proceedings, it has been found necessary first of all to persuade the Court to sit *in camera* to hear the application, thus causing delay and inconvenience and incurring extra expense.

The explanation for the approach taken in the 2002 Law is that it was thought, at the time when the drafting brief for the Law was in preparation, that due to the fact that under the equivalent U.K. Act, the search warrant issuing power is given to a district judge (equivalent to a Magistrate in Jersey), and the production order and explanation order making powers are given to a Circuit judge (*i.e.* a more senior judicial officer) it was necessary to reflect that hierarchical difference by giving the search warrant issuing power to the Bailiff but to give the other powers to the Court.

As the practical experience has shown, this was probably a mistake. The purpose of the draft Law is to put this matter right by amending Schedule 5 to the 2002 Law so that the powers to make production and explanation Orders are given to the Bailiff sitting alone.

There are no financial or manpower implications of the draft Law, except, perhaps a small saving in the expense of convening the Court to hear applications for these Orders.

European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 will, when brought into force by Act of the States, require the Committee in charge of a *Projet de Loi* to make a statement about the compatibility of the provisions of the *Projet* with the Convention rights (as defined by Article 1 of the Law). Although the Human Rights (Jersey) Law 2000 is not yet in force, on 28th July 2005 the Home Affairs Committee made the following statement before Second Reading of this *projet* in the States Assembly –

In the view of the Home Affairs Committee the provisions of the Draft Terrorism (Amendment) (Jersey) Law 200- are compatible with the Convention Rights.

Explanatory Note

This Law amends Schedule 5 of the Terrorism (Jersey) Law 2002 which concerns terrorist investigation procedures. The amendments are made to paragraphs 4 (Order for production of material), 5 (Rules of Court for orders under paragraph 4) and 6 (Explanations) of Schedule 5 to that Law.

Under paragraph 4 of Schedule 5 of the Law (Order for production of material), for the purposes of a terrorist investigation, an officer of the States of Jersey Police Force can make an application to the Royal Court for an order for the production of material. *Article 1(a)* amends paragraph 4 to allow the application for and making of such an order to be made to and by the Bailiff and gives the Bailiff consequential powers that relate to the making of such an order.

Article 1(b) makes consequential amendments to the wording of paragraph 4(2) of Schedule 5 that arise from the transfer of the power to make the order to the Bailiff.

Article 1(c) makes consequential amendments to the wording of paragraph 4(6) of Schedule 5 that arise from empowering the Bailiff to make an order for the production of material.

Article 1(d) amends paragraph 5 (Rules of court for orders under paragraph (4) of Schedule 5 to the Law which concerns the discharge and variation of an order for production of material under paragraph 4 of Schedule 5. The amendment provides that the Bailiff and not the Royal Court can vary or discharge an order for production of material.

Under paragraph 6 (Explanations) of Schedule 5 to the Law, an officer of the States of Jersey Police Force can apply to the Royal Court for an order to require a person to provide an explanation concerning any material seized on foot of either (a) a warrant issued under paragraph 1, or (b) an order issued under paragraph 4, of Schedule 5 to the Law. *Article 1(e)* amends paragraph 6(1) of Schedule 5 to allow the application for an explanation to be made to the Bailiff.

Article 2 provides a means of varying or discharging an order under paragraph 4 of Schedule 5 to the Terrorism (Jersey) Law 2002 that has been made by the Royal Court before the coming into force of this Law. The Bailiff can vary or discharge an order that has been made by the Royal Court.

Article 3 provides for the name of this Law and its commencement.

This Law will come into force on the seventh day following its registration.



Jersey

DRAFT TERRORISM (AMENDMENT) (JERSEY) LAW 200-

A LAW to amend further the Terrorism (Jersey) Law 2002.

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

1 Schedule 5 amended

In Schedule 5 to the Terrorism (Jersey) Law 2002^[1] –

- (a) in paragraphs 4(1), (2), (5) and (6), for the words “Royal Court” there shall be substituted the word “Bailiff”;
- (b) in paragraph 4(2), for the words “it may make an order that the person who appears to it” there shall be substituted the words “the Bailiff may make an order that the person who appears to the Bailiff”;
- (c) in paragraph 4(6), for the words “it may, on the application of an officer of the Force, order any person who appears to it” there shall be substituted the words “the Bailiff may, on the application of an officer of the Force, order any person who appears to the Bailiff”;
- (d) in paragraph 5(2)(a) and (b), for the words “Royal Court” there shall be substituted the word “Bailiff”;
- (e) in paragraph 6(1) for the words “Royal Court” there shall be substituted the word “Bailiff”.

2 Variation or discharge of certain orders made by Royal Court

- (1) This Article applies to an order made by the Royal Court under paragraph 4 of Schedule 5 to the Terrorism (Jersey) Law 2002 before the coming into force of this Law.
- (2) The Bailiff may vary or discharge an order to which this Article applies.
- (3) Pending the making of rules of court in accordance with paragraph 5(1) of Schedule 5 to the Terrorism (Jersey) Law 2002 –
 - (a) an order to which this Article applies may be discharged by the Bailiff on a written application made by any person subject to the order; and
 - (b) unless the Bailiff otherwise directs on grounds of urgency, the applicant shall, not less than 48 hours before making the application, send a copy of it and a notice in writing of the time and place where it is to be made to the Attorney General and to the officer of the Force on whose application the order to be discharged or varied was made or to any other officer of the

Force.

3 Citation and commencement

This Law may be cited as the Terrorism (Amendment) (Jersey) Law 200- and shall come into force on the seventh day following its registration.

[\[1\]](#) Chapter 17.860.