

STATES OF JERSEY



INTERCEPTION OF COMMUNICATIONS (JERSEY) LAW 1993: REPORT OF THE COMMISSIONER FOR 2002

Presented to the States on 18th February 2003

STATES GREFFE

REPORT

1. The Interception of Communications (Jersey) Law 1993 makes provision for and in connection with the interception of communications sent by post or by means of the public telecommunications system.
2. Article 2 creates the offence of unlawful interception where a person intentionally intercepts a communication in the course of its transmission by post or by means of the public telecommunications system. A person is not guilty of an offence under the Article if the communication is intercepted in obedience to a warrant issued by the Attorney General under Article 3 or where alternative defences provided by Article 2(2)(b)(d) are applicable.
3. Applications for a warrant are made to the Attorney General by the States of Jersey Police and by the States of Jersey Customs and Excise Department and are subject to strict requirements and controls.
4. By virtue of Article 3(2) the Attorney General shall not issue a warrant unless he considers that a warrant is necessary: (a) in the interests of national security or (b) for the purpose of preventing or detecting serious crime. Serious crime is defined in Article 1(3), the offence being committed only if: (a) it involves the use of violence, results in substantial gain or is conducted by a large number of persons in pursuit of a common purpose; or (b) the offence is one for which a person who has obtained the age of twenty-one years and has no previous convictions could reasonably be expected to be sentenced to a term of imprisonment for three years or more.
5. The issue and duration of warrants is covered by Article 5. A warrant shall, unless renewed, cease to have effect at the end of the relevant period, which, under paragraph 6(a), means two months beginning with the day on which it was issued. Under paragraph 6(2)(b) renewals are for one month although applications may be made for further renewals.
6. The duties of the Commissioner are defined by Article 9 and include the responsibility of keeping under review the functions of the Attorney General, which are conferred on him by Articles 3-6, and the adequacy of any arrangements made for the purposes of Article 7. The Commissioner has the additional duty to give to the Tribunal appointed under Article 8 such assistance as the Tribunal may require for the purpose of enabling it to carry out its functions under the Law.

The Tribunal has not asked for any assistance from me during the year 2002.

7. In the discharge of my duties I confirm that the Attorney General has made available to me all the documentation generated in relation to the requests for, and issue of, warrants for interception and I have examined the applications and the warrants. I am satisfied that the Law Officers have exercised the greatest care in issuing warrants during the course of last year. Indeed I am satisfied that all those concerned in the application for and execution of warrants have demonstrated an informed and conscientious recognition of their obligations. Every effort has been made to ensure that interception in each case does not go beyond what is strictly required to intercept communications covered by the warrant. I have found no evidence to suggest that any rule or guideline has been disobeyed, nor that any errors or irregularities have otherwise occurred.
8. In the course of my investigations this year I visited police headquarters. I had a meeting with the Chief Officer of Police, Mr. Graham Power, and with the Deputy Agent (Operations), States of Jersey Customs and Excise Department, Mr. Steven Le Marquand. I also met the officers who participate in the mechanics of interception at the site where those operations are conducted and I viewed the facilities available to them which are to a standard approved by the Home Office. Again this year, I was impressed by the conscientious approach to the operations on the part of those involved. A rigorous internal vetting procedure is in place for those engaged in monitoring duties and there exists both day to day and overall supervision by senior officers. Rules are clearly established to ensure that intercepted material is not reproduced and that it is never removed from the appropriate location, Knowledge of interceptions is kept strictly limited to those who need to know. I reviewed the vetting procedure and the rules on intercepted material and I am satisfied that they are apt to ensure compliance with the Law.

9. I am satisfied that those involved are aware that interception is rightly considered as a grave invasion of the privacy of an individual and that in accordance with the principle of Article 3(3) interception should only be used as a tool of last resort when all other investigative methods have either been tried and failed or have been considered. and for sound reasons rejected.
10. The duties of the Commissioner do not extend to possible breaches of Article 2 nor is he concerned with surveillance outside the context of interception. However, it may be assumed that if I had discovered a case of unlawful interception I would report it. I have found no such breach.
11. In the absence abroad of the Attorney General during the course of my review of the facility this year, I discussed both with the Solicitor General and with Mr. Power the contribution which the facility had made to the prevention and detection of serious crime during the course of 2002. I am satisfied that the contribution is significant and that interception is a valuable weapon for both police and the customs.
12. In accordance with the provisions of Article 9(8), it has been my practice to append to each Annual Report a Confidential Appendix providing further detail of the use of the facility. Lest the Bailiff should agree that it would be appropriate to withhold from publication those details which are necessarily sensitive and which would, if published, have a detrimental effect on the effectiveness of the facility, I attach such an Appendix for consideration by him as to whether it would be appropriate to invoke the provisions of Article 9(8).

SIR JOHN NUTTING Bt., Q.C.