

# **STATES OF JERSEY**



## **INTERCEPTION OF COMMUNICATIONS (JERSEY) LAW 1993: REPORT OF THE COMMISSIONER FOR 2005**

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**Presented to the States on 13th February 2006**

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**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 warrants are made to the Attorney General by the States of Jersey Police and by the States of Jersey Customs and Immigration Service 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.
5. Serious crime is defined in Article 1(3). An offence of serious crime is committed if, but only if: (a) it involves the use of violence, results in substantial gain or is conduct 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 21 years and has no previous convictions could reasonably be expected to be sentenced to a term of imprisonment for 3 years or more.
6. 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 2 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.
7. 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 my assistance during the year 2005.
8. In the discharge of my duties the Law Officers have made available to me all the documentation generated in relation to the requests for, and issue of, warrants for interception, including the Quarterly Reports submitted to the Law Officers during the course of the year. I have examined the documentation. I have discussed the position generally with the Attorney General and with the Solicitor General, and I am satisfied that the Law Officers have exercised the greatest care in the way in which they have issued their warrants.
9. In the course of my investigations I also visited Police Headquarters. I had a meeting with the Chief Officer of Police, and Officers of the Customs and Immigration Service. 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 in London.
10. I am satisfied that all those concerned in the applications for and execution of warrants have a clear and informed recognition of their obligations. Every effort is made to ensure that interception in each case does not go beyond what is strictly required to intercept communications covered by the warrant.
11. 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. I attach considerable importance to high standards of vetting and I am confident that appropriate procedures will apply to any telephone company which may be successful in bidding for a contract for telephone operations in the Bailiwick when Jersey

Telecom cease to retain the monopoly which they have enjoyed hitherto. I am satisfied that rules exist to ensure that intercepted material is not reproduced unnecessarily and that it is never removed from the appropriate location. I have been assured that knowledge of interceptions is kept strictly limited to those who need to know.

12. I am satisfied that those involved are aware that interception is rightly considered as a grave invasion of the privacy of individuals 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.
13. In the course of my discussions with the Law Officers and with the senior officers of Police and Customs I reviewed the use of the facility. I am satisfied that interception continues to be a valuable weapon for both Police and Customs in combating serious crime, and that it has proved its value during the course of last year.
14. This may prove to be the last Report which I make for a full year under the Interception of Communications (Jersey) Law 1993 since I understand that it is possible that the Regulation of Investigatory Powers (Jersey) Law 2005 will come into effect during the course of 2006. It is imperative that any intrusive activity, whether of the kind contemplated by the former or latter Laws, should be rigorously undertaken and monitored by all concerned. It is regrettable that there is a significant cost factor in the proper and effective implementation of such Laws. I can say from my experience as Commissioner during the last 7 years that since I have been consistently impressed by the diligent approach of those who operate the facility and the conscientious way in which they and the Law Officers carry out their duties, I am confident that all those involved are determined to ensure that the same high standards are applied when the new Law comes into effect.
15. 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.**  
**24th January 2006**