

PROJET DE LOI

ENTITLED

The Terrorism and Crime (Bailiwick of Guernsey) Law, 2002

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The Terrorism and Crime (Bailiwick of Guernsey) Law, 2002

THE STATES, in pursuance of their Resolution of the 1st day of November, 2001 and the 24th day of April, 2002^a have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

PART I

INTRODUCTORY

Terrorism: interpretation.

1. (1) In this Law "terrorism" means the use or threat of action where-

- (a) the action falls within subsection (2),
- (b) the use or threat is designed to influence the government or to intimidate the public or a section of the public, and
- (c) the use or threat is made for the purpose of advancing a political, religious or ideological cause.

^a Article XXI of Billet d'État No. XXI of 2001 and Article II of Billet d'État No. VI of 2002.

- (2) Action falls within this subsection if it -
- (a) involves serious violence against a person,
 - (b) involves serious damage to property,
 - (c) endangers a person's life, other than that of the person committing the action,
 - (d) creates a serious risk to the health or safety of the public or a section of the public, or
 - (e) is designed seriously to interfere with or seriously to disrupt an electronic system.

(3) The use or threat of action falling within subsection (2) which involves the use of firearms or explosives is terrorism whether or not subsection (1)(b) is satisfied.

- (4) In this section -
- (a) "action" includes action outside the Bailiwick,
 - (b) a reference to any person or to property is a reference to any person, or to property, wherever situated,
 - (c) a reference to the public includes a reference to the public of a country or territory other than the Bailiwick, and

(d) "the government" means the States of Guernsey, the States of Alderney, the Chief Pleas of Sark or the government of a country or territory outside the Bailiwick.

(5) In this Law a reference to action taken for the purposes of terrorism includes a reference to action taken for the benefit of a proscribed organisation.

Repeal of the 1990 Law.

2. The Prevention of Terrorism (Bailiwick of Guernsey) Law 1990^b is hereby repealed.

PART II PROSCRIBED ORGANISATIONS

Procedure

Proscription.

3. (1) For the purposes of this Law an organisation is proscribed if-
- (a) it is listed in Schedule 1, or
 - (b) it operates under the same name as an organisation listed in that Schedule.

^b Ordres en Conseil Vol. XXXII, p. 236.

(2) Subsection (1)(b) shall not apply in relation to an organization listed in Schedule 1 if its entry is the subject of a note in that Schedule.

(3) The Committee may by regulations -

(a) add an organisation to Schedule 1,

(b) remove an organisation from that Schedule,

(c) amend that Schedule in some other way.

(4) In cases of emergency regulations under subsection (3) may be made by the agreement of two members of the Committee.

(5) The Committee shall exercise its power under subsection (3)(a) in respect of an organisation if and only if the organisation is proscribed in the United Kingdom under the provisions of section 3(3) of the Act of 2000.

(6) The Committee shall exercise its power under subsection (3)(b) in respect of an organisation if and only if the organisation is deproscribed in the United Kingdom under the provisions of Part II of the Act of 2000.

Offences

Membership.

4. (1) A person commits an offence if he belongs or professes to belong to a proscribed organisation.

(2) It is a defence for a person charged with an offence under subsection (1) to prove -

- (a) that the organisation was not proscribed on the last (or only) occasion on which he became a member or began to profess to be a member, and
 - (b) that he has not taken part in the activities of the organisation at any time while it was proscribed.
- (3) A person guilty of an offence under this section shall be liable -
- (a) on conviction on indictment, to imprisonment for a term not exceeding ten years, to a fine or to both, or
 - (b) on summary conviction, to imprisonment for a term not exceeding six months, to a fine not exceeding level 5 on the uniform scale or to both.
- (4) In subsection (2) "proscribed" means proscribed for the purposes of this Law.

Support.

5. (1) A person commits an offence if -
- (a) he invites support for a proscribed organisation, and
 - (b) the support is not, or is not restricted to, the provision of money or other property (within the meaning of section 8).

(2) A person commits an offence if he arranges, manages or assists in arranging or managing a meeting which he knows is -

- (a) to support a proscribed organisation,
- (b) to further the activities of a proscribed organisation, or
- (c) to be addressed by a person who belongs or professes to belong to a proscribed organisation.

(3) A person commits an offence if he addresses a meeting and the purpose of his address is to encourage support for a proscribed organisation or to further its activities.

(4) Where a person is charged with an offence under subsection (2)(c) in respect of a private meeting it is a defence for him to prove that he had no reasonable cause to believe that the address mentioned in subsection (2)(c) would support a proscribed organisation or further its activities.

(5) In subsection (2) to (4) -

- (a) "meeting" means a meeting of three or more persons, whether or not the public are admitted, and
- (b) a meeting is private if the public are not admitted.

(6) A person guilty of an offence under this section shall be liable

- (a) on conviction on indictment, to imprisonment for a term not exceeding ten years, to a fine or to both, or

- (b) on summary conviction, to imprisonment for a term not exceeding six months, to a fine not exceeding level 5 on the uniform scale or to both.

Uniform.

- 6. (1) A person in a public place commits an offence if he -
 - (a) wears an item of clothing, or
 - (b) wears, carries or displays an article,

in such a way or in such circumstances as to arouse reasonable suspicion that he is a member or supporter of a proscribed organisation.

(2) A police officer may arrest a person without a warrant if he has reasonable grounds to suspect that the person is guilty of an offence under this section.

(3) A person guilty of an offence under this section shall be liable on summary conviction to -

- (a) imprisonment for a term not exceeding six months,
- (b) a fine not exceeding level 5 on the uniform scale, or
- (c) both.

PART III
TERRORIST PROPERTY

Interpretation

Terrorist property.

7. (1) In this Law "terrorist property" means -
- (a) money or other property which is likely to be used for the purposes of terrorism (including any resources of a proscribed organisation),
 - (b) proceeds of the commission of acts of terrorism, and
 - (c) proceeds of acts carried out for the purposes of terrorism.
- (2) In subsection (1) -
- (a) a reference to proceeds of an act includes a reference to any property which wholly or partly, and directly or indirectly, represents the proceeds of the act (including payments or other rewards in connection with its commission), and
 - (b) the reference to an organisation's resources includes a reference to any money or other property which is applied or made available, or is to be applied or made available, for use by the organisation.

Offences

Fund raising.

8. (1) A person commits an offence if he -
- (a) invites another to provide money or other property, and
 - (b) intends that it should be used, or has reasonable cause to suspect that it may be used, for the purposes of terrorism.

- (2) A person commits an offence if he -
- (a) receives money or other property, and
 - (b) intends that it should be used, or has reasonable cause to suspect that it may be used, for the purposes of terrorism.

- (3) A person commits an offence if he -
- (a) provides money or other property, and
 - (b) knows or has reasonable cause to suspect that it will or may be used for the purposes of terrorism.

(4) In this section a reference to the provision of money or other property is a reference to its being given, lent or otherwise made available, whether or not for consideration.

Use and possession.

9. (1) A person commits an offence if he uses money or other property for the purposes of terrorism.

(2) A person commits an offence if he -

(a) possesses money or other property, and

(b) intends that it should be used, or has reasonable cause to suspect that it may be used, for the purposes of terrorism.

Funding arrangements.

10. A person commits an offence if -

(a) he enters into or becomes concerned in an arrangement as a result of which money or other property is made available or is to be made available to another, and

(b) he knows or has reasonable cause to suspect that it will or may be used for the purposes of terrorism.

Money laundering.

11. (1) A person commits an offence if he enters into or becomes concerned in an arrangement which facilitates the retention or control by or on behalf of another person of terrorist property -

(a) by concealment,

(b) by removal from the jurisdiction,

(c) by transfer to nominees, or

(d) in any other way.

(2) It is a defence for a person charged with an offence under subsection (1) to prove that he did not know and had no reasonable cause to suspect that the arrangement related to terrorist property.

Disclosure of information : duty of persons not connected with Financial Services Businesses.

12. (1) This section applies where a person -

(a) believes or suspects that another person has committed an offence under any of sections 8 to 11, and

(b) bases his belief or suspicion on information which comes to his attention in the course of a trade, profession, business or employment.

(2) The person commits an offence if he does not disclose to a police officer as soon as is reasonably practicable -

(a) his belief or suspicion, and

(b) the information on which it is based.

(3) But this section does not apply if the information came to the person in the course of business in a financial services business.

(4) It is a defence for a person charged with an offence under subsection (2) to prove that he had a reasonable excuse for not making the disclosure.

(5) Where -

- (a) a person is in employment,
- (b) his employer has established a procedure for the making of disclosures of the matters specified in subsection (1), and
- (c) he is charged with an offence under subsection (2),

it is a defence for him to prove that he disclosed the matters specified in subsection (1) in accordance with the procedure.

(6) Subsection (2) does not require disclosure by a professional legal adviser of -

- (a) information which he obtains in privileged circumstances, or
- (b) a belief or suspicion based on information which he obtains in privileged circumstances.

(7) For the purpose of subsection (6) information is obtained by an adviser in privileged circumstances if it comes to him, otherwise than with a view to furthering a criminal purpose -

- (a) from a client or a client's representative, in connection with the provision of legal advice by the adviser to the client,
- (b) from a person seeking legal advice from the adviser, or from the person's representative, or
- (c) from any person, for the purpose of actual or contemplated legal proceedings.

(8) For the purposes of subsection (1)(a) a person shall be treated as having committed an offence under one of sections 8 to 11 if -

- (a) he has taken an action or been in possession of a thing, and
- (b) he would have committed an offence under one of those sections if he had been in the Bailiwick at the time when he took the action or was in possession of the thing.

(9) A person guilty of an offence under this section shall be liable-

- (a) on conviction on indictment, to imprisonment for a term not exceeding five years, to a fine or to both, or
- (b) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine not exceeding level 5 on the uniform scale or to both.

Disclosure of information : permission.

13. (1) A person may disclose to a police officer -

(a) a suspicion or belief that any money or other property is terrorist property or is derived from terrorist property;

(b) any matter on which the suspicion or belief is based.

(2) A person may make a disclosure to a police officer in the circumstances mentioned in section 12(1) and (2).

(3) Subsections (1) and (2) shall have effect notwithstanding any restriction on the disclosure of information imposed by statute or otherwise; and where a disclosure is made under those subsections the restriction shall not be regarded as breached.

(4) Where -

(a) a person is in employment, and

(b) his employer has established a procedure for the making of disclosures of the kinds mentioned in subsection (1) and section 12(2),

subsections (1) and (2) shall have effect in relation to that person as if any reference to disclosure to a police officer included a reference to disclosure in accordance with the procedure.

Co-operation with police.

14. (1) A person does not commit an offence under any of sections 8 to 11 if he is acting with the express consent of a police officer.

(2) Subject to subsection (3) and (4), a person does not commit an offence under any of sections 8 to 11 by involvement in a transaction or arrangement relating to money or other property if he discloses to a police officer-

- (a) his suspicion or belief that the money or other property is terrorist property, and
- (b) the information on which his suspicion or belief is based.

(3) Subsection (2) applies only where a person makes a disclosure-

- (a) after he becomes concerned in the transaction concerned,
- (b) on his own initiative, and
- (c) as soon as is reasonably practicable.

(4) Subsection (2) does not apply to a person if -

- (a) a police officer forbids him to continue his involvement in the transaction or arrangement to which the disclosure relates, and
- (b) he continues his involvement.

(5) It is a defence for a person charged with an offence under any of sections 8(2) and (3) and 9 to 11 to prove that -

(a) he intended to make a disclosure of the kind mentioned in subsections (2) and (3), and

(b) there is reasonable excuse for his failure to do so.

(6) Where -

(a) a person is in employment, and

(b) his employer has established a procedure for the making of disclosures of the same kind as may be made to a police officer under subsection (2),

this section shall have effect in relation to that person as if any reference to disclosure to a police officer included a reference to disclosure in accordance with the procedure.

(7) A reference in this section to a transaction or arrangement relating to money or other property includes a reference to use or possession.

Failure to disclose: Financial Services Businesses.

15. (1) A person commits an offence if each of the following three conditions is satisfied.

(2) The first condition is that he -

- (a) knows or suspects, or
- (b) has reasonable grounds for knowing or suspecting,

that another person has committed an offence under any of sections 8 to 11.

(3) The second condition is that the information or other matter-

- (a) on which his knowledge or suspicion is based, or
- (b) which gives reasonable grounds for such knowledge or suspicion,

came to him in the course of business in a financial services business.

(4) The third condition is that he does not disclose the information or other matter to a police officer or a nominated officer as soon as is practicable after it comes to him.

(5) But a person does not commit an offence under this section if-

- (a) he has a reasonable excuse for not disclosing the information or other matter; or
- (b) he is a professional legal adviser and the information or other matter came to him in privileged circumstances.

(6) In deciding whether a person committed an offence under this section the court must consider whether he followed any relevant guidance which was at the time concerned -

- (a) issued by the Guernsey Financial Services Commission, and
- (b) published in a manner it approved as appropriate in its opinion to bring the guidance to the attention of persons likely to be affected by it.

(7) A disclosure to a nominated officer is a disclosure which -

- (a) is made to a person nominated by the alleged offender's employer to receive disclosures under this section, and
- (b) is made in the course of the alleged offender's employment and in accordance with the procedure established by the employer for the purpose.

(8) Information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated or given to him -

- (a) by (or by a representative of) a client of his in connection with the giving by the adviser of legal advice to the client,
- (b) by (or by a representative of) a person seeking legal advice from the adviser, or
- (c) by a person in connection with legal proceedings or contemplated legal proceedings.

(9) But subsection (8) does not apply to information or other matter which is communicated or given with a view to furthering a criminal purpose.

(10) For the purpose of subsection (2) a person is to be taken to have committed an offence there mentioned if -

- (a) he has taken an action or been in possession of a thing, and
- (b) he would have committed the offence if he had been in the Bailiwick at the time when he took the action or was in possession of the thing.

(11) A person guilty of an offence under this section is liable -

- (a) on conviction on indictment to imprisonment for a term not exceeding five years or to a fine or to both;
- (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the uniform scale or to both.

Protected disclosures.

16. (1) A disclosure which satisfies the following three conditions is not to be taken to breach any restriction on the disclosure of information (however imposed).

(2) The first condition is that the information or other matter disclosed came to the person making the disclosure (the discloser) in the course of business in a financial services business.

- (3) The second condition is that the information or other matter-
 - (a) causes the discloser to know or suspect, or
 - (b) gives him reasonable grounds for knowing or suspecting,

that another person has committed an offence under any of sections 8 to 11.

(4) The third condition is that the disclosure is made to a police officer or a nominated officer as soon as is practicable after the information or other matter comes to the discloser.

- (5) A disclosure to a nominated officer is a disclosure which -
 - (a) is made to a person nominated by the discloser's employer to receive disclosures under this section, and
 - (b) is made in the course of the discloser's employment and in accordance with the procedure established by the employer for the purpose.

Penalties.

17. A person guilty of an offence under any of sections 8 to 11 shall be liable -

- (a) on conviction on indictment, to imprisonment for a term not exceeding 14 years, to a fine or to both, or

- (b) on summary conviction, to imprisonment for a term not exceeding six months, to a fine not exceeding level 5 on the uniform scale or to both.

Forfeiture.

18. (1) The court by or before which a person is convicted of an offence under any of sections 8 to 11 may make a forfeiture order in accordance with the provisions of this section.

(2) Where a person is convicted of an offence under section 8(1) or (2) or 9 the court may order the forfeiture of any money or other property -

- (a) which, at the time of the offence, he had in his possession or under his control, and
- (b) which, at that time, he intended should be used, or had reasonable cause to suspect might be used, for the purposes of terrorism.

(3) Where a person is convicted of an offence under section 8(3) the court may order the forfeiture of any money or other property -

- (a) which, at the time of the offence, he had in his possession or under his control, and
- (b) which, at that time, he knew or had reasonable cause to suspect would or might be used for the purposes of terrorism.

(4) Where a person is convicted of an offence under section 10 the court may order the forfeiture of the money or other property -

- (a) to which the arrangement in question related, and
- (b) which, at the time of the offence, he knew or had reasonable cause to suspect would or might be used for the purposes of terrorism.

(5) Where a person is convicted of an offence under section 11 the court may order the forfeiture of the money or other property to which the arrangement in question related.

(6) Where a person is convicted of an offence under any of sections 8 to 11, the court may order the forfeiture of any money or other property which wholly or partly, and directly or indirectly, is received by any person as a payment or other reward in connection with the commission of the offence.

(7) Where a person other than the convicted person claims to be the owner of or otherwise interested in anything which can be forfeited by an order under this section, the court shall give him an opportunity to be heard before making an order.

(8) Schedule 2 (which makes further provision in relation to forfeiture orders under this section) shall have effect.

Seizure of terrorist cash

Forfeiture of terrorist cash.

19. (1) Schedule 3 (which makes provision for enabling cash which-

- (a) is intended to be used for the purposes of terrorism,
- (b) consists of resources of an organisation which is a proscribed organisation, or
- (c) is, or represents, property obtained through terrorism,

to be forfeited in civil proceedings before the Royal Court sitting as an Ordinary Court) is to have effect.

(2) The powers conferred by Schedule 3 are exercisable in relation to any cash whether or not any proceedings have been brought for an offence in connection with the cash.

(3) Expressions used in this section have the same meanings as in Schedule 3.

Freezing orders

Power to make order.

20. (1) The Committee may make a freezing order if the following two conditions are satisfied.

(2) The first condition is that the Committee reasonably believes that -

- (a) action to the detriment of the economy of any part of the Bailiwick has been or is likely to be taken by a person or persons, or

(b) action constituting a threat to the life or property of one or more nationals of the United Kingdom or residents of the Bailiwick has been or is likely to be taken by a person or persons.

(3) If one person is believed to be taking or likely to take the action the second condition is that the person is -

(a) the government of a country or territory outside the Bailiwick, or

(b) a resident of a country or territory outside the Bailiwick.

(4) If two or more persons are believed to be taking or likely to take the action the second condition is that each of them falls within paragraph (a) or (b) of subsection (3); and different persons may fall within different paragraphs.

Contents of order.

21. (1) A freezing order is an order which prohibits persons from making funds available to or for the benefit of a person or persons specified in the order.

(2) The order must provide that these are the persons who are prohibited -

(a) all persons in the Bailiwick, and

(b) all persons elsewhere who are nationals of the United Kingdom and ordinarily resident in the Bailiwick or who are bodies incorporated under the law of any part of the Bailiwick.

(3) The order may specify the following (and only the following) as the person or persons to whom or for whose benefit funds are not to be made available -

(a) the person or persons reasonably believed by the Committee to have taken or to be likely to take the action referred to in section 20;

(b) any person the Committee reasonably believes has provided or is likely to provide assistance (directly or indirectly) to that person or any of those persons.

(4) A person may be specified under subsection (3) by -

(a) being named in the order, or

(b) falling within a description of persons set out in the order.

(5) The description must be such that a reasonable person would know whether he fell within it.

(6) Funds are financial assets and economic benefits of any kind.

Contents: further provision.

22. Schedule 4 contains further provisions about the contents of freezing orders.

Review of order.

23. The Committee must keep a freezing order under review.

Duration of order.

24. A freezing order ceases to have effect at the end of the period of two years starting with the day on which it is made.

Nationals and residents.

25. (1) A national of the United Kingdom is an individual who is -

(a) a British citizen, a British Dependent Territories citizen, a British National (Overseas) or a British Overseas citizen,

(b) a person who under the British Nationality Act 1981^c is a British subject, or

(c) a British protected person within the meaning of that Act.

(2) A resident of the Bailiwick is -

(a) an individual who is ordinarily resident in the Bailiwick, or

^c An Act of Parliament (1981 c. 61).

(b) a body incorporated under the law of any part of the Bailiwick.

(3) A resident of a country or territory outside the Bailiwick is -

(a) an individual who is ordinarily resident in such a country or territory, or

(b) a body incorporated under the law of such a country or territory.

(4) For the purposes of subsection (3)(b) a branch situated in a country or territory outside the Bailiwick of a body incorporated under the law of any part of the Bailiwick is to be treated as a body incorporated under the law of the country or territory where the branch is situated.

(5) This section applies for the purposes of this Part.

Procedure for making orders.

26. (1) A power to make a freezing order is exercisable by regulations made by the Committee.

(2) A freezing order must be laid before a meeting of the States as soon as possible and shall, if at that or the next meeting the States resolve to annul it, cease to have effect, but without prejudice to anything done under the order or the power to make a new order.

Procedure for making certain amending orders.

27. (1) This section applies if -

- (a) a freezing order is made specifying by description (rather than by name) the person or persons to whom or for whose benefit funds are not to be made available,
- (b) it is proposed to make a further order which amends the freezing order only so as to make it specify by name the person or persons (or any of the persons) to whom or for whose benefit funds are not to be made available, and
- (c) the Committee reasonably believe that the person or persons named fall within the description contained in the freezing order and the further order contains a statement of the Committee's belief.

(2) This section also applies if -

- (a) a freezing order is made specifying by name the person or persons to whom or for whose benefit funds are not to be made available,
- (b) it is proposed to make a further order which amends the freezing order only so as to make it specify by name a further person or further persons to whom or for whose benefit funds are not to be made available, and

(c) the Committee reasonably believe that the further person or persons fall within the same description as the person or persons specified in the freezing order and the further order contains a statement of the Committee's belief.

(3) This section also applies if -

(a) a freezing order is made, and

(b) it is proposed to make a further order which amends the freezing order only so as to make it specify (whether by name or description) fewer persons to whom or for whose benefit funds are not to be made available.

(4) If this section applies, the regulations containing the further order are subject to annulment in pursuance of a resolution of the States.

Procedure for revoking orders.

28. The Committee may make regulations to revoke a freezing order.

Orders: supplementary.

29. (1) Where this Part confers a power to make provision, different provisions may be made for different purposes.

(2) An order under this Part may include supplementary, incidental, saving or transitional provisions.

(3) Nothing in this Part affects the generality of subsection (2).

Miscellaneous

The Crown, States of Guernsey, States of Alderney and Chief Pleas of Sark.

30. (1) A freezing order binds the Crown, the States of Guernsey, the States of Alderney and the Chief Pleas of Sark subject to the following provisions of this section.

(2) No contravention by the Crown, the States of Guernsey, the States of Alderney or the Chief Pleas of Sark of a provision of a freezing order makes them criminally liable; but the Royal Court sitting as an Ordinary Court may, on the application of a person appearing to that Court to have an interest, declare unlawful any act or omission of the States of Guernsey, the States of Alderney or the Chief Pleas of Sark which constitutes such a contravention.

(3) Despite subsection (2), the provisions of a freezing order apply to persons in the public service of the Crown or the States of Guernsey, the States of Alderney and the Chief Pleas of Sark as they apply to other persons.

PART IV

TERRORIST INVESTIGATION

Interpretation

Terrorist investigation.

31. In this Law "terrorist investigation" means an investigation of -

- (a) the commission, preparation or instigation of acts of terrorism,

- (b) an act which appears to have been done for the purposes of terrorism,
- (c) the resources of a proscribed organisation, or
- (d) the commission, preparation or instigation of an offence under this Law.

Cordons

Cordoned areas.

32. (1) An area is a cordoned area for the purposes of the Law if it is designated under this section.

(2) A designation may be made by a police officer and only if he considers it expedient for the purposes of a terrorist investigation.

(3) If a designation is made orally, the officer making it shall confirm it in writing as soon as is reasonably practicable.

(4) The officer making a designation shall arrange for the demarcation of the cordoned area, so far as is reasonably practicable -

- (a) by means of tape marked with the word "police", or
- (b) in such other manner as a police officer considers appropriate.

Power to designate.

33. (1) A designation under section 32(1) may be made -
- (a) anywhere in the Bailiwick, by a member of the Island police force of at least the rank of Chief Inspector or a customs officer of at least the grade of Surveyor;
 - (b) in Sark, by the Constable or Vingtenier.
- (2) A police officer who is not of the rank required by subsection (1)(a) may make a designation if he considers it necessary by reasons of urgency.
- (3) Where a police officer makes a designation in reliance on subsection (2) he shall as soon as is reasonably practicable -
- (a) make a written record of the time at which the designation was made, and
 - (b) ensure that a police officer of at least the rank of Chief Inspector is informed.
- (4) An officer who is informed of a designation in accordance with subsection (3)(b) -
- (a) shall confirm the designation or cancel it with effect from such time as he may direct, and
 - (b) shall, if he cancels the designation, make a written record of the cancellation and the reason for it.

Duration.

34. (1) A designation under section 32 has effect, subject to subsections (2) to (5) of this section, during the period -

- (a) beginning at the time when it is made, and
- (b) ending with a date or at a time specified in the designation.

(2) The date or time specified under subsection (1)(b) must not occur after the end of the period of 14 days beginning with the day on which the designation is made.

(3) The period during which a designation has effect may be extended in writing from time to time by -

- (a) the person who made it, or
- (b) a person who could have made it (otherwise than by virtue of section 33(2)).

(4) An extension shall specify the additional period during which the designation is to have effect.

(5) A designation shall not have effect after the end of the period of 28 days beginning with the day on which it is made.

Police powers.

35. (1) A police officer in uniform may -

- (a) order a person in a cordoned area to leave it immediately;
- (b) order a person immediately to leave premises which are wholly or partly in or adjacent to a cordoned area;
- (c) order the driver or person in charge of a vehicle in a cordoned area to move it from the area immediately;
- (d) arrange for the removal of a vehicle from a cordoned area;
- (e) arrange for the movement of a vehicle within a cordoned area;
- (f) prohibit or restrict access to a cordoned area by pedestrians or vehicles.

(2) A person commits an offence if he fails to comply with an order, prohibition or restriction imposed by virtue of subsection (1).

(3) It is a defence for a person charged with an offence under subsection (2) to prove that he had a reasonable excuse for his failure.

(4) A person guilty of an offence under subsection (2) shall be liable on summary conviction to -

- (a) imprisonment for a term not exceeding three months,
- (b) a fine not exceeding level 4 on the uniform scale, or

(c) both.

(5) The reference in subsection (1) to a police officer in uniform shall be deemed to include, in Sark, the Constable or Vingtenier.

Information and evidence

Powers.

36. Schedule 5 (power to obtain information in terrorist investigations, etc) shall have effect.

Financial information.

37. Schedule 6 (financial information) shall have effect.

Information about acts of terrorism.

38. (1) This section applies where a person has information which he knows or believes might be of material assistance -

- (a) in preventing the commission by another person of an act of terrorism, or
- (b) in securing the apprehension, prosecution or conviction of another person, in the Bailiwick, for an offence involving the commission, preparation or instigation of an act of terrorism.

(2) The person commits an offence if he does not disclose the information as soon as reasonably practicable in accordance with subsection (3).

(3) Disclosure is in accordance with this subsection if it is made to a police officer.

(4) It is a defence for a person charged with an offence under subsection (2) to prove that he had a reasonable excuse for not making the disclosure.

(5) A person guilty of an offence under this section is liable -

(a) on conviction on indictment, to imprisonment for a term not exceeding five years or a fine or both,

(b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the uniform scale or both.

(6) Proceedings for an offence under this section may be taken, and the offence may for the purposes of those proceedings be treated as having been committed, in any place where the person to be charged is or has at any time been since he first knew or believed that the information might be of material assistance as mentioned in subsection (1).

Account monitoring orders.

39. Schedule 7 (Account monitoring orders) shall have effect.

Disclosure of information, etc.

40. (1) Subsection (2) applies where a person knows or has reasonable cause to suspect that a police officer is conducting or proposes to conduct a terrorist investigation.

(2) The person commits an offence if he -

- (a) discloses to another anything which is likely to prejudice the investigation, or
- (b) interferes with material which is likely to be relevant to the investigation.

(3) Subsection (4) applies where a person knows or has reasonable cause to suspect that a disclosure has been or will be made under any of sections 12 to 16 or 38.

(4) The person commits an offence if he -

- (a) discloses to another anything which is likely to prejudice an investigation resulting from the disclosure under that section, or
- (b) interferes with material which is likely to be relevant to an investigation resulting from the disclosure under that section.

(5) It is a defence for a person charged with an offence under subsection (2) or (4) to prove -

- (a) that he did not know and had no reasonable cause to suspect that the disclosure or interference was likely to affect a terrorist investigation, or

(b) that he had a reasonable excuse for the disclosure or interference.

(6) Subsections (2) and (4) do not apply to a disclosure which is made by a professional legal adviser -

(a) to his client or to his client's representative in connection with the provision of legal advice by the adviser to the client and not with a view to furthering a criminal purpose, or

(b) to any person for the purpose of actual or contemplated legal proceedings and not with a view to furthering a criminal purpose.

(7) A person guilty of an offence under this section shall be liable-

(a) on conviction on indictment, to imprisonment for a term not exceeding five years, to a fine or to both, or

(b) on summary conviction, to imprisonment for a term not exceeding six months, to a fine not exceeding level 5 on the uniform scale or to both.

(8) For the purposes of this section -

(a) a reference to conducting a terrorist investigation includes a reference to taking part in the conduct of, or assisting, a terrorist investigation, and

- (b) a person interferes with material if he falsifies it, conceals it, destroys it or disposes of it, or if he causes or permits another to do any of those things.

PART V
COUNTER-TERRORIST POWERS

Suspected terrorists

Terrorist interpretation.

41. (1) In this Part "terrorist" means a person who -

- (a) has committed an offence under any of sections 4, 5 and 8 to 11,
- (b) is or has been concerned in the commission, preparation or instigation of acts of terrorism.

(2) The reference in subsection (1)(b) to a person who has been concerned in the commission, preparation or instigation of acts of terrorism includes a reference to a person who has been, whether before or after the commencement of this Law, concerned in the commission, preparation or instigation of acts of terrorism within the meaning given by section 1.

Arrest without warrant.

42. (1) A police officer may arrest without a warrant a person whom he reasonably suspects to be a terrorist.

(2) Where a person is arrested under this section the provisions of Schedule 9 (detention: treatment, review and extension) shall apply.

(3) Subject to subsections (4) to (7), a person detained under this section shall (unless detained under any other power) be released not later than the end of the period of 48 hours beginning -

(a) with the time of his arrest under this section, or

(b) if he was being detained under Schedule 8 when he was arrested under this section, with the time when his examination under that Schedule began.

(4) If on a review of a person's detention under Part II of Schedule 9 the review officer does not authorise continued detention, the person shall (unless detained in accordance with subsection (5) or (6) or under any other power) be released.

(5) Where a police officer intends to make an application for a warrant under paragraph 24 of Schedule 9 extending a person's detention, the person may be detained pending the making of the application.

(6) Where an application has been made under paragraph 24 or 31 of Schedule 9 in respect of a person's detention, he may be detained pending the conclusion of proceedings on the application.

(7) Where an application under paragraph 24 or 31 of Schedule 9 is granted in respect of a person's detention, he may be detained, subject to paragraph 32 of that Schedule, during the period specified in the warrant.

(8) The refusal of an application in respect of a person's detention under paragraph 24 or 31 of Schedule 9 shall not prevent his continued detention in accordance with this section.

(9) Any person arrested on suspicion of being a terrorist in a place in the Bailiwick outside the Island of Guernsey shall as soon as practicable be transferred to a place of detention in the Island of Guernsey.

Search of premises.

43. (1) The Bailiff or the appropriate judicial officer may on the application of a police officer issue a warrant in relation to specified premises if he is satisfied that there are reasonable grounds for suspecting that a person whom the police officer reasonably suspects to be a person falling within section 41(1)(b) is to be found there.

(2) A warrant under this section shall authorise any police officer to enter and search the specified premises for the purpose of arresting the person referred to in subsection (1) under section 42.

(3) An officer may, if necessary, use reasonable force for the purpose of executing a warrant under this section.

Search of persons.

44. (1) A police officer may stop and search a person whom he reasonably suspects to be a terrorist to discover whether he has in his possession anything which may constitute evidence that he is a terrorist.

(2) A police officer may search a person arrested under section 42 to discover whether he has in his possession anything which may constitute evidence that he is a terrorist.

(3) A search of a person under this section must be carried out by someone of the same sex.

(4) A police officer may seize and retain anything which he discovers in the course of a search of a person under subsection (1) or (2) and which he reasonably suspects may constitute evidence that the person is a terrorist.

Power to stop and search

Authorisation.

45. (1) An authorisation under this subsection authorises any police officer in uniform to stop a vehicle in an area or at a place specified in the authorisation and to search -

- (a) the vehicle;
- (b) the driver of the vehicle;
- (c) a passenger in the vehicle;
- (d) anything in or on the vehicle or carried by the driver or a passenger.

(2) An authorisation under this subsection authorises any police officer in uniform to stop a pedestrian in an area or at a place specified in the authorisation and to search -

- (a) the pedestrian;

(b) anything carried by him.

(3) An authorisation under subsection (1) or (2) may be given only if the person giving it considers it expedient for the prevention of acts of terrorism.

(4) An authorisation may be given -

(a) only to -

(i) members of the Island police force; and

(ii) customs officers; and

(b) only by -

(i) in the case of members of the Island police force, subject to subparagraph (iii), an officer of the Island police force of at least the rank of Chief Inspector;

(ii) in the case of customs officers, subject to subparagraph (iii), a customs officer of at least the grade of Surveyor;

(iii) in Sark, the Constable.

(5) If an authorisation is given orally, the person giving it shall confirm it in writing as soon as is reasonably practicable.

(6) The reference in subsection (1) to a police officer in uniform shall not apply to the Constable or Vingtenier in Sark.

Exercise of power.

46. (1) The power conferred by an authorisation under section 45(1) or (2) -

- (a) may be exercised only for the purpose of searching for articles of a kind which could be used in connection with terrorism, and
- (b) may be exercised whether or not the police officer has grounds for suspecting the presence of articles of that kind.

(2) A police officer may seize and retain an article which he discovers in the course of a search by virtue of section 45(1) or (2) and which he reasonably suspects is intended to be used in connection with terrorism.

(3) A police officer exercising the power conferred by an authorisation may not require a person to remove any clothing in public except for headgear, footwear, an outer coat, a jacket or gloves.

(4) Where a police officer proposes to search a person or vehicle by virtue of section 45(1) or (2) he may detain the person or vehicle for such time as is reasonably required to permit the search to be carried out at or near the place where the person or vehicle is stopped.

(5) Where -

- (a) a vehicle or pedestrian is stopped by virtue of section 45(1) or (2), and
- (b) the driver of the vehicle or the pedestrian applies for a written statement that the vehicle was stopped, or that he was stopped, by virtue of section 45(1) or (2),

the written statement shall be provided.

(6) An application under subsection (5) must be made within the period of 12 months beginning with the date on which the vehicle or pedestrian was stopped.

Duration of authorisation.

47. (1) An authorisation under section 45 has effect, subject to subsections (2) to (7), during the period -

- (a) beginning at the time when the authorisation is given, and
- (b) ending with a date or at a time specified in the authorisation.

(2) The date or time specified under subsection (1)(b) must not occur after the end of the period of 28 days beginning with the day on which the authorisation is given.

(3) The person who gives an authorisation shall inform Her Majesty's Procureur as soon as is reasonably practicable.

(4) If an authorisation is not confirmed by Her Majesty's Procureur before the end of the period of 48 hours beginning with the time when it is given -

(a) it shall cease to have effect at the end of that period, but

(b) its ceasing to have effect shall not affect the lawfulness of anything done in reliance on it before the end of that period.

(5) Where Her Majesty's Procureur confirms an authorisation he may substitute an earlier date or time for the date or time specified under subsection (1)(b).

(6) Her Majesty's Procureur may cancel an authorisation with effect from a specified time.

(7) An authorisation may be renewed in writing by the person who gave it or by a person who could have given it; and subsections (1) to (6) shall apply as if a new authorisation were given on each occasion on which the authorisation is renewed.

Offences.

48. (1) A person commits an offence if he -

(a) fails to stop a vehicle when required to do so by a police officer in the exercise of the power conferred by an authorisation under section 45(1),

- (b) fails to stop when required to do so by a police officer in the exercise of the power conferred by an authorisation under section 45(2),
- (c) wilfully obstructs a police officer in the exercise of the power conferred by an authorisation under section 45(1) or (2).

(2) A person guilty of an offence under this section shall be liable on summary conviction to -

- (a) imprisonment for a term not exceeding six months,
- (b) a fine not exceeding level 5 on the uniform scale, or
- (c) both.

Parking

Authorisations.

49. (1) An authorisation under this section authorises any police officer in uniform to prohibit or restrict the parking of vehicles on a road specified in the authorisation.

(2) An authorisation may be given only if the person giving it considers it expedient for the prevention of acts of terrorism.

(3) An authorisation may be given -

- (a) anywhere in the Bailiwick, by -

(i) a member of the Island police force of at least the rank of Chief Inspector; or

(ii) a customs officer of at least the grade of Surveyor;

(b) in Sark, by the Constable or Vingtenier.

(4) If an authorisation is given orally, the person giving it shall confirm it in writing as soon as is reasonably practicable.

(5) The reference in subsection (1) to a police officer in uniform shall be deemed to include, in Sark, the Constable or Vingtenier

Exercise of powers.

50. (1) The power conferred by an authorisation under section 49 shall be exercised by placing a traffic sign on the road concerned.

(2) A police officer exercising the power conferred by an authorisation under section 49 may suspend a parking place.

Duration of authorisation.

51. (1) An authorisation under section 49 has effect, subject to subsections (2) and (3), during the period specified in the authorisation.

(2) The period specified shall not exceed 28 days.

(3) An authorisation may be renewed in writing by the person who gave it or by a person who could have given it; and subsections (1) and (2) shall

apply as if a new authorisation were given on each occasion on which the authorisation is renewed.

Offences.

52. (1) A person commits an offence if he parks a vehicle in contravention of a prohibition or restriction imposed by virtue of section 49.

(2) A person commits an offence if -

(a) he is the driver or other person in charge of a vehicle which has been permitted to remain at rest in contravention of any prohibition or restriction imposed by virtue of section 49, and

(b) he fails to move the vehicle when ordered to do so by a police officer in uniform.

(3) It is a defence for a person charged with an offence under this section to prove that he had a reasonable excuse for the act or omission in question.

(4) Possession of a current disabled person's badge shall not itself constitute a reasonable excuse for the purposes of subsection (3).

(5) A person guilty of an offence under subsection (1) shall be liable on summary conviction to a fine not exceeding level 4 on the uniform scale.

(6) A person guilty of an offence under subsection (2) shall be liable on summary conviction to -

(a) imprisonment for a term not exceeding three months,

(b) a fine not exceeding level 4 on the uniform scale, or

(c) both.

Interpretation of sections 49 to 52.

53. In sections 49 to 52 -

"disabled person's badge" means a badge issued by the States Traffic Committee under the provisions of section 2 of the Road Traffic (Disabled Persons) Ordinance, 1991^d;

"driver" means, in relation to a vehicle which has been left on any road, the person who was driving it when it was left there;

"parking" means leaving a vehicle or permitting it to remain at rest;

"vehicle" means any vehicle, whether or not it is in a fit state for use on roads, and includes any chassis or body, with or without wheels, appearing to have formed part of such a vehicle, and any load carried by, and anything attached to, such a vehicle.

Port and border controls

Port and border controls.

54. (1) Schedule 8 (port and border controls) shall have effect.

^d

Recueil d'Ordonnances Tome XXV, p. 315.

(2) The States may by Ordinance repeal paragraph 13 of Schedule 8.

(3) The powers conferred by Schedule 8 shall be exercisable notwithstanding the rights conferred by section 1 of the Immigration Act 1971^e.

PART VI
TERRORIST OFFENCES ETC.

Terrorist offences

Weapons training.

55. (1) A person commits an offence if he provides instruction or training in the making or use of -

- (a) firearms,
- (b) radioactive material or weapons designed or adapted for the discharge of any radioactive material,
- (c) explosives, or
- (d) chemical, biological or nuclear weapons.

(2) A person commits an offence if he receives instruction or training in the making or use of -

- (a) firearms,

- (b) radioactive material or weapons designed or adapted for the discharge of any radioactive material,
- (c) explosives, or
- (d) chemical, biological or nuclear weapons.

(3) A person commits an offence if he invites another to receive instruction or training and the receipt -

- (a) would constitute an offence under subsection (2), or
- (b) would constitute an offence under subsection (2) but for the fact that it is to take place outside the Bailiwick.

(4) For the purpose of subsections (1) to (3) -

- (a) a reference to the provision of instruction includes a reference to making it available either generally or to one or more specific persons, and
- (b) an invitation to receive instruction or training may be either general or addressed to one or more specific persons.

^e An Act of Parliament (1971 c. 77); extended to the Bailiwick by the Immigration (Guernsey) Order 1993 (No. 1796).

(5) It is a defence for a person charged with an offence under this section in relation to instruction or training to prove that his action or involvement was wholly for a purpose other than assisting, preparing for or participating in terrorism.

(6) A person guilty of an offence under this section shall be liable -

(a) on conviction on indictment, to imprisonment for a term not exceeding ten years, to a fine or to both, or

(b) on summary conviction, to imprisonment for a term not exceeding six months, to a fine not exceeding level 5 on the uniform scale or to both.

(7) A court by or before which a person is convicted of an offence under this section may order the forfeiture of anything which the court considers to have been in the person's possession for purposes connected with the offence.

(8) Before making an order under subsection (7) a court must give an opportunity to be heard to any person, other than the convicted person, who claims to be the owner of or otherwise interested in anything which can be forfeited under that subsection.

(9) An order under subsection (7) shall not come into force until there is no further possibility of it being varied, or set aside, on appeal (disregarding any power of a court to grant leave to appeal out of time).

Weapons training: interpretation.

56. In section 55 -

"biological weapon" means a biological agent or toxin (within the meaning of the Biological Weapons Act 1974^f) in a form capable of use for hostile purposes or anything to which section 1(1)(b) of that Act applies;

"chemical weapon" has the meaning given by section 1 of the Chemical Weapons Act 1996^g; and

"radioactive material" means radioactive material capable of endangering life or causing harm to human health.

Directing terrorist organisation.

57. (1) A person commits an offence if he directs, at any level, the activities of an organisation which is concerned in the commission of acts of terrorism.

(2) A person guilty of an offence under this section is liable on conviction on indictment to imprisonment for life.

Possession for terrorist purposes.

58. (1) A person commits an offence if he possesses an article in circumstances which give rise to a reasonable suspicion that his possession is for a purpose connected with the commission, preparation or instigation of an act of terrorism.

^f An Act of Parliament (1974 c. 6); extended to the Bailiwick by United Kingdom S.I. No. 1110 of 1974 (Ordres en Conseil Vol. XXIV, p.258).

^g An Act of Parliament (1996 c. 6); extended to the Bailiwick by United Kingdom S.I. No. 743 of 2000.

(2) It is a defence for a person charged with an offence under this section to prove that his possession of the article was not for a purpose connected with the commission, preparation or instigation of an act of terrorism.

(3) In proceedings for an offence under this section, if it is proved that an article -

(a) was on any premises at the same time as the accused,
or

(b) was on premises of which the accused was the occupier or which he habitually used otherwise than as a member of the public,

the court may assume that the accused possessed the article, unless he proves that he did not know of its presence on the premises or that he had no control over it.

(4) A person guilty of an offence under this section shall be liable -

(a) on conviction on indictment, to imprisonment for a term not exceeding 10 years, to a fine or to both, or

(b) on summary conviction, to imprisonment for a term not exceeding six months, to a fine not exceeding level 5 on the uniform scale or to both.

Collection of information.

59. (1) A person commits an offence if -

- (a) he collects or makes a record of information of a kind likely to be useful to a person committing or preparing an act of terrorism, or
- (b) he possesses a document or record containing information of that kind.

(2) In this section "record" includes a photographic or electronic record.

(3) It is a defence for a person charged with an offence under this section to prove that he had a reasonable excuse for his action or possession.

- (4) A person guilty of an offence under this section shall be liable-
- (a) on conviction on indictment, to imprisonment for term not exceeding 10 years, to a fine or to both, or
 - (b) on summary conviction, to imprisonment for a term not exceeding six months, to a fine not exceeding level 5 on the uniform scale or to both.

(5) A court by or before which a person is convicted of an offence under this section may order the forfeiture of any document or record containing information of the kind mentioned in subsection (1)(a).

(6) Before making an order under subsection (5) a court must give an opportunity to be heard to any person, other than the convicted person, who claims to be the owner of or otherwise interested in anything which can be forfeited under that subsection.

(7) An order under subsection (5) shall not come into force until there is no further possibility of it being varied, or set aside, on appeal (disregarding any power of a court to grant leave to appeal out of time).

Inciting terrorism overseas

Inciting terrorism overseas.

60. (1) A person commits an offence if -
- (a) he incites another person to commit an act of terrorism wholly or partly outside the Bailiwick, and
 - (b) the act would, if committed in the Bailiwick, constitute one of the offences listed in subsection (2).
- (2) Those offences are -
- (a) murder,
 - (b) wounding or causing grievous bodily harm with intent,
 - (c) an offence under section 1(2) of the Criminal Damage (Bailiwick of Guernsey) Law, 1983^h (endangering life by damaging property).

^h

Ordres en Conseil Vol. XXVIII, p. 203.

(3) A person guilty of an offence under this section shall be liable to any penalty to which he would be liable on conviction of the offence listed in subsection (2) which corresponds to the act which he incites.

(4) For the purposes of subsection (1) it is immaterial whether or not the person incited is in the Bailiwick at the time of the incitement.

(5) Nothing in this section imposes criminal liability on any person acting on behalf of, or holding office under, the Crown.

Terrorist bombing and finance offences

Terrorist bombing: jurisdiction.

61. (1) If -

- (a) a person does anything outside the Bailiwick as an act of terrorism or for the purposes of terrorism, and
- (b) his action would have constituted the commission of one of the offences listed in subsection (2) if it had been done in the Bailiwick;

he shall be guilty of an offence.

(2) The offences referred to in subsection (1)(b) are -

- (a) an offence under section 3 or 5 of the Explosive Substances Act 1883ⁱ (attempt to cause explosion to endanger life etc.),
- (b) an offence under section 1 of the Biological Weapons Act 1974 (offences relating to biological agents and toxins), and
- (c) an offence under section 2 of the Chemical Weapons Act 1996 (offences relating to chemical weapons),

Terrorist finance: jurisdiction.

62. (1) If -

- (a) a person does anything outside the Bailiwick, and
- (b) his action would have constituted the commission of an offence under any of sections 8 to 11 if it had been done in the Bailiwick,

he shall be guilty of the offence.

(2) For the purposes of subsection (1)(b), section 11(1)(b) shall be read as if for “the jurisdiction” there were substituted “a jurisdiction”.

Nuclear weapons

Use etc. of nuclear weapons.

63. (1) A person who -
- (a) knowingly causes a nuclear weapon explosion,
 - (b) develops or produces, or participates in the development or production of, a nuclear weapon,
 - (c) has a nuclear weapon in his possession,
 - (d) participates in the transfer of a nuclear weapon, or
 - (e) engages in military preparations, or in preparation of a military nature, intending to use, or threaten to use, a nuclear weapon,

is guilty of an offence.

(2) Subsection (1) has effect subject to the exceptions and defences in sections 64 and 65.

(3) For the purposes of subsection (1)(b) a person participates in the development or production of a nuclear weapon if he does any act which -

- (a) facilitates the development by another of the capability to produce or use a nuclear weapon, or
- (b) facilitates the making by another of a nuclear weapon,

knowing or having reason to believe that his act has (or will have) that effect.

(4) For the purposes of subsection (1)(d) a person participates in the transfer of a nuclear weapon if -

- (a) he buys or otherwise acquires it or agrees with another to do so,
- (b) he sells or otherwise disposes of it or agrees with another to do so, or
- (c) he makes arrangements under which another person either acquires or disposes of it or agrees with a third person to do so.

(5) A person guilty of an offence under this section is liable on conviction on indictment to imprisonment for life.

(6) In this section "nuclear weapon" includes a nuclear explosive device that is not intended for use as a weapon.

(7) This section applies to acts done outside the Bailiwick, but only if they are done by a Bailiwick person.

(8) Nothing in subsection (7) affects any criminal liability arising otherwise than under that subsection.

Exceptions.

- 64.** (1) Nothing in section 63 applies -

(a) to an act which is authorised under subsection (2), or

(b) to an act done in the course of an armed conflict.

(2) The Lieutenant-Governor may -

(a) authorise any act which would otherwise contravene section 63 in such manner and on such terms as he thinks fit, and

(b) withdraw or vary any authorisation given under this subsection.

(3) Any question arising in proceedings for an offence under section 63 as to whether anything was done in the course of an armed conflict shall be determined by the Lieutenant-Governor.

(4) A certificate purporting to set out any such determination and to be signed by the Lieutenant-Governor shall be received in evidence in any such proceedings and shall be presumed to be so signed unless the contrary is shown.

Defences.

65. (1) In proceedings for an offence under section 63(1)(c) or (d) relating to an object it is a defence for the accused to show that he did not know and had no reason to believe that the object was a nuclear weapon.

(2) But he shall be taken to have shown that fact if -

- (a) sufficient evidence is adduced to raise an issue with respect to it, and
- (b) the contrary is not proved by the prosecution beyond reasonable doubt.

(3) In proceedings for such an offence it is also a defence for the accused to show that he knew or believed that the object was a nuclear weapon but, as soon as reasonably practicable after he first knew or believed that fact, he took all reasonable steps to inform the Lieutenant-Governor or a police officer of his knowledge or belief.

Assisting or inducing weapons related acts overseas

Assisting or inducing certain weapons related acts outside the Bailiwick.

66. (1) A person who aids, abets, counsels or procures, or incites, a person who is not a Bailiwick person to do a relevant act outside the Bailiwick is guilty of an offence.

(2) For this purpose a relevant act is an act that, if done by a Bailiwick person, would contravene any of the following provisions -

- (a) section 1 of the Biological Weapons Act 1974 (offences relating to biological agents and toxins),
- (b) section 2 of the Chemical Weapons Act 1996 (offences relating to chemical weapons), or
- (c) section 63 above (offences relating to use, etc, of nuclear weapons).

(3) Nothing in this section applies to an act mentioned in subsection (1) which -

(a) relates to a relevant act which would contravene section 63, and

(b) is authorised by the Lieutenant-Governor,

and section 64(2) applies for the purpose of authorising acts that would otherwise constitute an offence under this section.

(4) A person accused of an offence under this section in relation to a relevant act which would contravene a provision mentioned in subsection (2) may raise any defence which would be open to a person accused of the corresponding offence ancillary to an offence under that provision.

(5) A person convicted of an offence under this section is liable on conviction on indictment to imprisonment for life.

(6) This section applies to acts done outside the Bailiwick, but only if they are done by a Bailiwick person.

(7) Nothing in this section prejudices any criminal liability existing apart from this section.

Supplemental provisions relating to sections 63 and 66

Extraterritorial application.

67. Proceedings for an offence committed under section 63 and 66 outside the Bailiwick may be taken, and the offence may for incidental purposes be treated as having been committed, in any part of the Bailiwick.

Powers of entry.

68. (1) If the Bailiff or the appropriate judicial officer is satisfied on information on oath that there are reasonable grounds for suspecting that evidence of the commission of an offence under section 63 or 66 is to be found on any premises, he may issue a warrant authorising a police officer and any other person named in the warrant to enter the premises, if necessary by force, at any time within one month from the time of the issue of the warrant and to search them.

(2) The powers of a person who enters the premises under the authority of the warrant include power -

- (a) to take with him such other persons and such equipment as appear to him to be necessary,
- (b) to inspect, seize and retain any substance, equipment or document found on the premises,
- (c) to require any document or other information which is held in electronic form and is accessible from the premises to be produced in a form -
 - (i) in which he can read and copy it, or
 - (ii) from which it can readily be produced in a form in which he can read and copy it,

- (d) to copy any document which he has reasonable cause to believe may be required as evidence for the purposes of proceedings in respect of an offence under section 63 or 66.

(3) A police officer who enters premises under the authority of a warrant or by virtue of subsection (2)(a) may search or cause to be searched any person on the premises who the police officer has reasonable cause to believe may have in his possession any document or other thing which may be required as evidence for the purposes of proceedings in respect of an offence under section 63 or 66.

- (4) No police officer shall search a person of the opposite sex.

- (5) A person who -

- (a) wilfully obstructs a police officer or person named in the warrant in the exercise of a power conferred by a warrant under this section, or

- (b) fails without reasonable excuse to comply with a reasonable request made by a police officer or person named in the warrant for the purpose of facilitating the exercise of such a power,

is guilty of an offence.

- (6) A person guilty of an offence under subsection (5) is liable -

- (a) on summary conviction, to a fine not exceeding level 5 on the uniform scale, and
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or to both.

Offences.

69. (1) A person who knowingly or recklessly makes a false or misleading statement for the purpose of obtaining (or opposing the variation or withdrawal) of authorisation for the purposes of section 63 or 66 is guilty of an offence.

(2) A person guilty of an offence under subsection (1) is liable -

- (a) on summary conviction to a fine of an amount not exceeding level 5 on the uniform scale,
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or to both.

(3) Where an offence under section 63, 66 or subsection (1) above committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

- (a) a director, manager, secretary or other similar officer of the body corporate, or
- (b) any person who was purporting to act in any such capacity,

he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(4) In subsection (3) "director", in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

Interpretation of sections 63 to 69.

70. In this Part "Bailiwick person" means a person ordinarily resident in the Bailiwick who is -

- (a) a British citizen, a British Dependent Territories citizen, a British National (Overseas) or a British Overseas citizen,
- (b) a person who under the British Nationality Act 1981 is a British subject, or
- (c) a British protected person within the meaning of that Act;

or a body incorporated under the law of any part of the Bailiwick.

Dangerous substances

Use of noxious substances to cause harm and intimidate.

71. (1) A person who takes any action which -

- (a) involves the use of a noxious substance or other noxious thing,

- (b) has or is likely to have an effect falling within subsection (2), and
- (c) is designed to influence the government or to intimidate the public or a section of the public,

is guilty of an offence.

(2) Action falls within this subsection if it -

- (a) causes serious violence against a person anywhere in the world;
- (b) causes serious damage to real or personal property anywhere in the world;
- (c) endangers human life or creates a serious risk to the health or safety of the public or a section of the public;
or
- (d) induces in members of the public the fear that the action is likely to endanger their lives or create a serious risk to their health or safety,

but any effect on the person taking the action is to be disregarded.

(3) A person who -

- (a) makes a threat that he or another will take any action falling within subsection (1); and

- (b) intends thereby to induce in any person anywhere in the world the fear that the threat is likely to be carried out,

is guilty of an offence.

- (4) A person guilty of an offence under this section is liable -
 - (a) on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the uniform scale,
 - (b) on conviction on indictment, to imprisonment for a term not exceeding fourteen years or a fine or both.

- (5) In this section -

"the public" includes the public of a country or territory other than the Bailiwick, and

"the government" means the government of any part of the Bailiwick or of a country or territory other than the Bailiwick.

Hoaxes and threats involving noxious substances or things.

- 72.** (1) A person is guilty of an offence if he -
- (a) places any substance or other thing in any place; or
 - (b) sends any substance or other thing from one place to another (by post or any other means whatever);

with the intention of inducing in a person anywhere in the world a belief that it is likely to be (or contain) a noxious substance or other noxious thing and thereby endanger human life or create a serious risk to human health.

(2) A person is guilty of an offence if he communicates any information which he knows or believes to be false with the intention of inducing in a person anywhere in the world a belief that a noxious substance or other noxious thing is likely to be present (whether at the time the information is communicated or later) in any place and thereby endanger human life or create a serious risk to human health.

(3) A person guilty of an offence under this section is liable -

(a) on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the uniform scale or both, and

(b) on conviction on indictment, to imprisonment for a term not exceeding seven years or a fine or both.

Sections 71 and 72: supplementary.

73. (1) For the purposes of sections 71 and 72 "substance" includes any biological agent and any other natural or artificial substance (whatever its form, origin or method of production).

(2) For a person to be guilty of an offence under section 71(3) or 72 it is not necessary for him to have any particular person in mind as the person in whom he intends to induce the belief in question.

Bomb hoaxes.

74. (1) A person is guilty of an offence if he -

(a) places any article in any place; or

(b) sends any article (by post or any other means whatever);

with the intention of inducing in any person in the world a belief that it is likely to explode or ignite and thereby cause personal injury or damage to property.

(2) In subsection (1) "article" includes substance.

(3) A person is guilty of an offence if he communicates any information which he knows or believes to be false to another person with the intention of inducing in him or any other person a false belief that a bomb or other thing liable to explode or ignite is present in any place or location.

(4) For a person to be guilty of an offence under subsection (1) or (3) it is not necessary for him to have any particular person in mind as the person in whom he intends to induce the belief mentioned in that subsection.

(5) A person guilty of an offence under this section shall be liable-

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the uniform scale or to both,

(b) on conviction on indictment, to imprisonment for a term not exceeding seven years or to a fine or to both.

PART VII
GENERAL

Police powers.

75. (1) A power conferred by virtue of this Law on a police officer-
- (a) is additional to powers which he has at common law or by virtue of any other enactment, and
 - (b) shall not be taken to affect those powers.

(2) A police officer may if necessary use reasonable force for the purpose of exercising a power conferred on him by virtue of this Law (apart from paragraph 2 of Schedule 8).

(3) Where anything is seized by a police officer under a power conferred by virtue of this Law, it may (unless the contrary intention appears) be retained for so long as is necessary in all the circumstances.

Powers to stop and search.

76. (1) A power to search premises conferred by virtue of this Law shall be taken to include power to search a container.

(2) A power conferred by virtue of this Law to stop a person includes power to stop a vehicle (other than an aircraft which is airborne).

(3) A person commits an offence if he fails to stop a vehicle when required to do so by virtue of this section.

(4) A person guilty of an offence under subsection (3) shall be liable on summary conviction to -

- (a) imprisonment for a term not exceeding six months,
- (b) a fine not exceeding level 5 on the uniform scale, or
- (c) both.

Defences.

77. (1) Subsection (2) applies where in accordance with a provision mentioned in subsection (5) it is a defence for a person charged with an offence to prove a particular matter.

(2) If the person adduces evidence which is sufficient to raise an issue with respect to the matter the court or Jurats shall assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.

(3) Subsection (4) applies where in accordance with a provision mentioned in subsection (5) a court -

- (a) may make an assumption in relation to a person charged with an offence unless a particular matter is proved, or
- (b) may accept a fact as sufficient evidence unless a particular matter is proved.

(4) If evidence is adduced which is sufficient to raise an issue with respect to the matter mentioned in subsection (3)(a) or (b) the court shall treat it as proved unless the prosecution disproves it beyond reasonable doubt.

(5) The provisions in respect of which subsections (2) and (4) apply are sections 5(4), 40(5)(a), 55, 58 and 59 of this Law.

Crown servants, regulators, etc.

78. (1) The Committee may make regulations providing for any of sections 8 to 14, 17, 18 and 40 to apply to persons in the public service of the Crown.

(2) The Committee may make regulations providing for section 12 not to apply to persons who are in its opinion performing or connected with the performance of regulatory, supervisory, investigative or registration functions of a public nature.

(3) Regulations -

- (a) may make different provision for different purposes,
- (b) may make provision which is to apply only in specified circumstances, and
- (c) may make provision which applies only to particular persons or to persons of a particular description.

Interpretation.

79. (1) In this Law -

"act" and **"action"** include omission,

"Act of 2000" means the Terrorism Act 2000^j;

"appropriate judicial officer" means -

- (a) in Alderney, the Chairman of the Court of Alderney or, if he is absent or unable to act, a Jurat of the Court of Alderney authorised by him to act in that behalf,
- (b) in Sark, the Seneschal or, if he is absent or unable to act, his deputy;

"article" includes substance and any other thing,

"Bailiwick" means the Bailiwick of Guernsey,

"Committee" means the States of Guernsey Advisory and Finance Committee,

"customs officer" means an officer within the meaning of section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972^k;

"dwelling" means a building or part of a building used as a dwelling, and a vehicle which is habitually stationary and which is used as a dwelling,

^j An Act of Parliament (2000 c. 11).

^k Ordres en Conseil Vol. XXIII, p. 573; amended by No. XIII of 1991.

"explosive" means -

- (a) an article or substance manufactured for the purpose of producing a practical effect by explosion,
- (b) materials for making an article or substance within paragraph (a),
- (c) anything used or intended to be used for causing or assisting in causing an explosion, and
- (d) a part of anything within paragraph (a) or (c),

"financial services businesses" means any type of business listed in the Schedule to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999¹,

"firearm" includes an air gun or air pistol,

"Her Majesty's Procureur" includes Her Majesty's Comptroller,

"immigration officer" means a person appointed as an immigration officer under paragraph 1 of Schedule 2 to the Immigration Act 1971,

"Island police force" means the salaried police force of the Island of Guernsey,

"Islands" means the Bailiwick, Jersey and the Isle of Man,

¹ Order in Council No. VIII of 1999.

"Lieutenant-Governor" means the person for the time being holding the office of Lieutenant-Governor and Commander-in-Chief of the Island of Guernsey and its dependencies;

"organisation" includes any association or combination of persons,

"police officer" means -

- (a) in relation to Guernsey, Herm and Jethou, a member of the Island police force and, within the limits of his jurisdiction, a member of the special constabulary of the Island of Guernsey;
- (b) in relation to Alderney, a member of the Island police force, a member of any police force which may be established by the States of Alderney and, within the limits of his jurisdiction, a special constable appointed by the Court of Alderney under section 15 of the Government of Alderney Law, 1987^m;
- (c) in relation to Sark, the Constable, the Vingtenier and a member of the Island police force;
- (d) a customs officer;

^m Ordres en Conseil Vol. XXX, p. 37; Vol. XXXI, pp. 83 and 306; No. XI of 1993; No. IX of 1995; No. IV of 1996; No. IV of 1998; and No. I of 2000; section 15 has been prospectively repealed and replaced by the Government of Alderney (Amendment) Law, 2000.

"premises" includes any place and in particular includes -

- (a) a vehicle,
- (b) an offshore installation within the meaning given in section 44 of the Petroleum Act 1998ⁿ, and
- (c) a tent or moveable structure,

"property" includes property wherever situated and whether real or personal, hereditary or moveable, and things in action and other intangible or incorporeal property,

"public place" means a place to which members of the public have or are permitted to have access, whether or not for payment,

"road" means any highway and any road to which the public has access,

"ship" includes any boat, hovercraft or other vessel whatsoever,

"uniform scale" means the scale of fines designated by the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989^o,

ⁿ An Act of Parliament (1998 c. 17).

^o Ordres en Conseil Vol. XXXI, p. 279; the scale of fines was amended by Ordinance No. XXII of 1998.

"**vehicle**", except in sections 49 to 52 and Schedule 8, includes an aircraft, hovercraft, train or vessel.

(2) Unless the context otherwise requires, references in this Law to an enactment are references thereto as amended, re-enacted (with or without modification), extended or applied.

(3) The Interpretation (Guernsey) Law, 1948^P applies to the interpretation of this Law throughout the Bailiwick.

(4) In relation to offences tried before the Court of Alderney or the Court of the Seneschal, the penalties stipulated by this Law shall be applicable notwithstanding the provisions of section 13 of the Government of Alderney Law, 1987 and section 23 of the Reform (Sark) Law, 1951^Q.

Index of defined expressions.

80. In this Law the expressions listed below are defined by the provisions specified.

<i>Expression</i>	<i>Interpretation provision</i>
Act	Section 79
Act of 2000	Section 79
Action	Section 79
Action taken for the purposes	Section 1(5)

^P Ordres en Conseil Vol. XIII, p. 355.

^Q Ordres en Conseil Vol. XV, p. 215; section 23 was substituted by Vol. XXIII, p. 200 and amended by Vol. XXIX, p. 27 and Orders in Council No. VII of 1989 and No. XII of 1991.

of terrorism

Appropriate judicial officer	Section 79
Article	Section 79
Bailiwick	Section 79
Bailiwick person	Section 70
Cash	Schedule 6 paragraph 1(2)
Committee	Section 79
Cordoned area	Section 32
Customs officer	Section 79
Dwelling	Section 79
Examining officer	Schedule 8 paragraph 1
Explosive	Section 79
Financial services business	Section 79
Firearm	Section 79
Forfeiture order	Section 18
Freezing order	Section 21 & schedule 4
Her Majesty's Procureur	Section 79
Immigration officer	Section 79
Island police force	Section 79
Islands	Section 79
Lieutenant-Governor	Section 79
National of the United Kingdom	Section 25
Nominated officer	Section 15(7)
Organisation	Section 79
Police officer	Section 79
Premises	Section 79
Property	Section 79
Proscribed organisation	Section 3(1)
Public place	Section 79

Resident of the Bailiwick	Section 25
Resident of a country or territory outside the Bailiwick	Section 25
Restraint order	Schedule 2 paragraph 3
Road	Section 79
Ship	Section 79
Terrorism	Section 1
Terrorist (in Part V)	Section 41
Terrorist cash	Schedule 3 paragraph 1
Terrorist investigation	Section 31
Terrorist property	Section 7
Uniform scale	Section 79
Vehicle	Section 79
Vehicle (in sections 49 to 52)	Section 53
Vehicle (except in sections 49 to 52 & schedule 8)	Section 79

Transitional provisions.

81. Where, immediately before the coming into force of this Law, a person is being detained by virtue of a provision of the Prevention of Terrorism (Bailiwick of Guernsey) Law, 1990, the provisions of that Law shall continue to apply to him, in place of the corresponding provisions of this Law, until his detention comes to an end.

General provisions as to subordinate legislation.

82. (1) Any Ordinance, regulation or rule under this Law -

(a) may be amended or repealed by a subsequent

Ordinance, regulation or rule, as the case may be, hereunder;

- (b) may contain such consequential, incidental, supplementary and transitional provision as may appear to be necessary or expedient.

(2) Any power conferred by this Law to make any Ordinance, regulation or rule may be exercised -

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases;

- (b) so as to make, as respects the cases in relation to which it is exercised -

- (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise);

- (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes;

- (iii) any such provision either unconditionally or subject to any prescribed conditions.

(3) The Committee (and any other committee of the States) shall, before recommending the States to agree to make an Ordinance under this Law, consult the General Purposes and Finance Committee of the Chief Pleas of Sark and the Policy and Finance Committee of the States of Alderney in relation to the terms of the proposed Ordinance.

(4) Regulations made under this Law shall be made after consultation with the Policy and Finance Committee of the States of Alderney and the General Purposes and Finance Committee of the Chief Pleas of Sark.

(5) A failure to comply with subsection (4) or (5) shall not invalidate any Ordinance or (as the case may be) regulation made under this Law.

Citation and commencement.

83. This Law may be cited as the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 and shall come into force on the day immediately following the day of its registration on the records of the Island of Guernsey.

SCHEDULE 1

Section 3

PROSCRIBED ORGANISATIONS

The Irish Republican Army
Cumann na mBan
Fianna na hEireann
The Red Hand Commando
Saor Eire
The Ulster Freedom Fighters
The Ulster Volunteer Force
The Irish National Liberation Army
The Irish People's Liberation Organisation
The Ulster Defence Association
The Loyalist Volunteer Force
The Continuity Army Council
The Orange Volunteers
The Red Hand Defenders
Al-Qa'ida
Egyptian Islamic Jihad
Al-Gama'at al-Islamiya
Armed Islamic Group (Groups Islamique Armée) (GIA)
Salafist Group for Call and Combat (Groupe Salafiste pour la
Prédication et le Combat) (GSPC)
Babbar Khalsa
International Sikh Youth Federation
Harakat Mujahideen
Jaish e Mohammed
Lashkar e Tayyaba
Liberation Tigers of Tamil Eelam (LTTE)

Hizballah External Security Organisation
Hamas-Izz al-Din al-Qassem Brigades
Palestinian Islamic Jihad-Shaqaqi
Abu Nidal Organisation
Islamic Army of Aden
Mujaheddin e Khalq
Kurdistan Workers' Party (Partiya Karkeren Kurdistan) (PKK)
Revolutionary People's Liberation Party - Front (Devrimci Halk
Kurtulus Partisi-Cephesi) (DHKP-C)
Basque Homeland and Liberty (Euskadi ta Askatasuna) (ETA)
17 November Revolutionary Organisation (N17)

Note: The entry for the Orange Volunteers refers to the organisation which uses that name and in the name of which a statement described as a press release was published on 14th October 1998.

SCHEDULE 2

Section 18

FORFEITURE ORDERS

1. (1) Where a court makes an order under section 18 (a "forfeiture order") it may make an order -
 - (a) requiring any money or other property to which the forfeiture order applies to be paid or handed over to Her Majesty's Sheriff (and in this Schedule "Her Majesty's Sheriff" means, in relation to Alderney, the Clerk of the Court of Alderney and, in relation to Sark, the Prévôt);
 - (b) directing any such property other than money or land to be sold or otherwise disposed of in such manner as the court may direct and the proceeds paid to Her Majesty's Sheriff;
 - (c) appointing a receiver to take possession, subject to such conditions and exceptions as may be specified by the court, of any such property which is land, to realise it in such manner as the court may direct and to pay the proceeds to Her Majesty's Sheriff;
 - (d) directing a specified part of any such money, or of the proceeds of sale, disposal or realisation of any such property, to be paid by Her Majesty's Sheriff to or for a specified person falling within section 23(7);

- (e) making such other provision as appears to the court to be necessary for giving effect to the forfeiture order or to any order made by virtue of subparagraph (a), (b), (c) or (d).

(2) A forfeiture order shall not come into force until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of the order being set aside.

(3) The balance of any sums in the hands of Her Majesty's Sheriff by virtue of an order made under subparagraph (1) shall, after making payment (where appropriate) under subparagraph (1)(d) or paragraph 2(2), be treated as if it were a fine imposed by the court.

(4) Her Majesty's Sheriff shall, on the application of Her Majesty's Procureur or the defendant in the proceedings in which the forfeiture order was made, certify in writing the extent (if any) to which, at the date of the certificate, effect has been given to the order in respect of the money or other property to which it applies.

(5) In this paragraph references to the proceeds of sale, disposal or realisation of property are references to the proceeds after deduction of the costs of sale, disposal or realisation.

2. (1) Where Her Majesty's Sheriff or a receiver appointed under paragraph 1(1)(c) takes any action -

- (a) in relation to property which is not subject to forfeiture being action which he would be entitled to take if it were such property;

- (b) believing, and having reasonable grounds for believing, that he is entitled to take that action in relation to that property;

he shall not be liable to any person in respect of any loss or damage resulting from his action except in so far as the loss or damage is caused by his negligence.

(2) A receiver appointed under paragraph 1(1)(c) is entitled to be paid his remuneration and expenses out of the proceeds of realisation of the property or, if and so far as the proceeds are insufficient, by the States.

Restraint orders

3. (1) The Royal Court may, in accordance with this paragraph, by order (a "restraint order") prohibit any person, subject to such conditions and exceptions as may be specified therein, from dealing with any property liable to forfeiture, that is to say any property -

- (a) in respect of which a forfeiture order has been made; or
- (b) in the possession or under the control of the person referred to in subparagraph (3) or (4).

(2) A restraint order may apply -

- (a) to all property in the possession of or under the control of a specified person, whether the property is described or not;

(b) to property coming into the possession of or under the control of a specified person after the making of the order.

(3) A restraint order may be made where -

(a) proceedings have been instituted against a person for an offence under any of sections 8 to 11,

(b) the proceedings have not been concluded, and

(c) either a forfeiture order has been made or it appears to the Royal Court that a forfeiture order may be made in the proceedings.

(4) A restraint order may also be made where -

(a) a criminal investigation has been started in the Bailiwick with regard to a person's involvement in an offence under any of sections 8 to 11, and

(b) it appears to the Royal Court that a forfeiture order may be made in proceedings for the offence.

(5) Where the Royal Court has made an order under this paragraph by virtue of subparagraph (4), it may discharge the order if proceedings in respect of the offence are not instituted within such time as it considers reasonable.

(6) For the purposes of this paragraph, dealing with property includes, without prejudice to the generality of that expression -

- (a) where a debt is owed to the person concerned, making a payment to any person in reduction of the amount of the debt; and
- (b) removing property from the Bailiwick.

(7) In exercising the powers conferred by this paragraph, the Royal Court shall not take account of any obligations of any person having an interest in the property subject to the restraint order which might frustrate the making of a forfeiture order.

(8) For the purposes of this paragraph proceedings for an offence are instituted -

- (a) when process in respect of the offence is issued to secure the attendance of any person before a court of the Bailiwick;
- (b) when a person is charged with the offence;
- (c) when a summons in respect of the offence is served on a person; or
- (d) when a person first appears before a court of the Bailiwick in respect of the offence;

and where the application of this subparagraph would result in there being more than one time for the institution of proceedings, they shall be taken to be instituted at the earliest of those times.

(9) For the purposes of this paragraph and paragraph 4(2)(b) proceedings are concluded -

- (a) when a forfeiture order has been made in those proceedings and effect has been given to it in respect of all the money or other property to which it applies; or
- (b) when (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of a forfeiture order being made in the proceedings.

(10) In this paragraph "criminal investigation" means an investigation which police officers or other persons have a duty to conduct with a view to it being ascertained whether a person should be charged with an offence.

4. (1) A restraint order -

- (a) may be made only on an application by or on behalf of Her Majesty's Procureur;
- (b) may be made on an ex parte application; and
- (c) shall provide for notice to be given to persons affected by the order.

(2) A restraint order made under paragraph 3(3) -

- (a) may be discharged or varied in relation to any property; and
- (b) shall be discharged when proceedings for the offence are concluded.

(3) A restraint order made under paragraph 3(4) may be discharged if all proceedings in respect of any offence have been concluded.

(4) An application for the discharge or variation of a restraint order may be made by any person affected by it.

(5) In exceptional circumstances or in an emergency, a restraint order may be made (without prejudice to the powers in that behalf of the Royal Court) -

- (a) in relation to property in Alderney, securities of the States of Alderney, securities of an Alderney company, other securities registered in a register kept in Alderney, units of a collective investment scheme in connection with which registration is carried on in Alderney or a vessel registered in a register maintained in Alderney, by the Chairman of the Court of Alderney or, if he is absent or unable to act, by any Jurat of the Court of Alderney;
- (b) in relation to property in Sark, securities of the Chief Pleas of Sark, other securities registered in a register kept in Sark, units of a collective investment scheme in connection with which registration is carried on in Sark

or a vessel registered in a register maintained in Sark, by the Seneschal of Sark or, if he is absent or unable to act, by his Deputy;

on an ex parte application otherwise than in open court by Her Majesty's Procureur or by any person authorised by him in that behalf; and references in paragraphs 3 and 5 to the Royal Court shall include references to the said Chairman, Jurat, Seneschal or Deputy Seneschal (as the case may be).

5. (1) Where the Royal Court has made a restraint order, a police officer may seize any property subject to the order for the purpose of preventing it from being removed from the Bailiwick.

(2) Property seized under this paragraph shall be dealt with in accordance with the Royal Court's directions.

6. (1) A restraint order and any application therefor in respect of real property in the Bailiwick may be registered by Her Majesty's Procureur -

- (a) if the property is in Guernsey, in the Livre des Hypothèques, Actes de Cour et Obligations at the Greffe in Guernsey;
- (b) if the property is in Alderney, by noting it against the entry relating to the property in the Alderney Land Register established under Part III of the Alderney Land and Property, etc. Law, 1949^r as if an application had been made under section 18(1) of that

Law and concurred in by the registered owner of the property as mentioned in section 18(2) of that Law;

- (c) if the property is in Sark, at the Greffe in Sark as if it were a judgment debt ordered to be registered against the property by an act of the Court of the Seneschal.

(2) An order or application registered under subparagraph (1) shall have effect as a preliminary vesting order in favour of the Crown (with priority from the date of its registration); except that, notwithstanding any rule of court or customary law to the contrary, the Crown shall remain entitled to levy execution upon the defendant's personal property in respect of all or any part of any amount which has been, or which may be, ordered to be paid by the defendant under a forfeiture order.

Compensation

7. (1) If proceedings are instituted against a person for an offence under this Law and either -

- (a) the proceedings do not result in his conviction for any such offence; or
- (b) where he is convicted of one or more such offences -
 - (i) the conviction or convictions are quashed; or

^r Ordres en Conseil Vol. XIV, p. 67; section 18 was amended by No. VII of 1994.

- (ii) he is pardoned by Her Majesty in respect of the conviction or convictions concerned,

the Royal Court sitting as an Ordinary Court may, on application by a person who had an interest in any property which was subject to a forfeiture or restraint order made in or in relation to those proceedings, and subject to subparagraphs (2) and (3), order compensation to be paid to the applicant if, having regard to all the circumstances, it considers it appropriate to do so.

(2) The Royal Court sitting as an Ordinary Court shall not order compensation to be paid in any case unless it is satisfied that -

- (a) there is some serious default on the part of a person concerned in the investigation or prosecution of the offence concerned; and
- (b) the applicant has suffered loss in consequence of anything done in relation to the property by or in pursuance of an order under this Part of this Schedule.

(3) The Royal Court sitting as an Ordinary Court shall not order compensation to be paid in any case where it appears to it that the proceedings would have been instituted even if the serious default had not occurred.

(4) The amount of compensation to be paid under this paragraph shall be such as the Royal Court sitting as an Ordinary Court thinks just in all the circumstances of the case.

(5) Compensation payable under this paragraph shall be paid by the States of Guernsey.

Enforcement of orders made elsewhere in the British Islands

8. In the following provisions of this Schedule -

"an English order" means -

- (a) an order made in England or Wales under section 23 of the Act of 2000 (an "English forfeiture order");
- (b) an order made under paragraph 5 of Schedule 4 to the Act of 2000 (an "English restraint order"); or
- (c) an order made under any other provision of Part I of that Schedule in relation to an English forfeiture or restraint order;

"a Scottish order" means -

- (a) an order made in Scotland under section 23 of the Act of 2000 (a "Scottish forfeiture order");
- (b) an order made under paragraph 18 of Schedule 4 to the Act of 2000 (a "Scottish restraint order"); or
- (c) an order made under any other provision of Part II of that Schedule in relation to a Scottish forfeiture or restraint order;

"a Northern Irish order" means -

- (a) an order made in Northern Ireland under section 23 of the Act of 2000 (a "Northern Irish forfeiture order");
- (b) an order made under paragraph 30 of Schedule 4 to the Act of 2000 (a "Northern Irish restraint order"); or
- (c) an order made under any other provision of Part III of that Schedule in relation to a Northern Irish forfeiture or restraint order;

"an Islands order" means -

- (a) an order made in the Isle of Man or Jersey under a provision of the law of either Island corresponding to section 18 of this Law.
- (b) a restraint order made in the Isle of Man or Jersey under a provision of the law of either Island corresponding to paragraph 3 of this Schedule.

9. (1) An English, Scottish, Northern Irish or Islands order shall, subject to the provisions of this paragraph, have effect in the law of the Bailiwick but shall be enforced there only in accordance with the provisions of this paragraph and of any rules of court (made by the Royal Court) as to the manner in which and the conditions subject to which such orders are to be enforced there.

(2) The Royal Court shall on an application made to it in accordance with rules of court (made by the Royal Court) for the registration of an

English, Scottish, Northern Irish or Islands order, direct that the order shall, in accordance with such rules, be registered in the Royal Court.

(3) Rules of court (made by the Royal Court) shall also make provision -

(a) for cancelling or varying the registration of an English, Scottish, Northern Irish or Islands forfeiture order when effect has been given to it (whether in the Bailiwick or elsewhere) in respect of all or, as the case may be, part of the money or other property to which the order applies,

(b) for cancelling or varying the registration of an English, Scottish, Northern Irish or Islands restraint order which has been discharged or varied by the court by which it was made.

(4) If an English, Scottish, Northern Irish or Islands forfeiture order is registered under this paragraph, the Royal Court shall have, in relation to that order, the same powers as it has under paragraph 1(1) in relation to a forfeiture order made by it (and paragraph 2 applies accordingly).

(5) The balance of any sums received by Her Majesty's Sheriff by virtue of an order made under subparagraph (4) shall, after making payment (where appropriate) under paragraph 1(1)(d) or 2(2), be paid by him to the States of Guernsey.

(6) Paragraphs 5 and 6 apply to a registered English, Scottish, Northern Irish or Islands restraint order as they apply to a restraint order, and the

Royal Court shall have the same power to make an order for or in relation to the arrest of any property in relation to proceedings brought or likely to be brought for an English, Scottish, Northern Irish or Islands restraint order as it would have if those proceedings had been brought or were likely to be brought in the Royal Court.

(7) Without prejudice to the foregoing provisions, if an English, Scottish, Northern Irish or Islands order is registered under this paragraph -

- (a) the Royal Court shall have, in relation to its enforcement, the same power;
- (b) proceedings for or in respect of its enforcement may be taken; and
- (c) proceedings for or in respect of any contravention of it (whether before or after such registration) may be taken,

as if the order had originally been made in the Royal Court.

(8) The Royal Court may additionally, for the purpose of -

- (a) assisting the achievement in the Bailiwick of the purposes of an English, Scottish, Northern Irish or Islands order; or
- (b) assisting any receiver or other person directed by any such order to sell or otherwise dispose of property,

make such orders or do otherwise as seems to it appropriate.

(9) A document which purports to be a copy of an English, Scottish, Northern Irish or Islands order and which purports to be certified as such by a proper officer of the court by which it was made and a document which purports to be a certificate for purposes corresponding to those of paragraph 1(4) and which purports to be certified by a proper officer of the court concerned shall, in the Bailiwick be received in evidence without further proof.

Enforcement of external orders

10. (1) The States may by Ordinance make provision for the purpose of enabling the enforcement in the Bailiwick of external orders.

(2) An "external order" means an order -

- (a) which is made in a country or territory designated by Ordinance of the States,
- (b) which makes relevant provision.

(3) "Relevant provision" means -

- (a) provision for the forfeiture of terrorist property ("an external forfeiture order"), or
- (b) provision prohibiting dealing with property which is subject to an external forfeiture order or in respect of which such an order could be made in proceedings which have been or are to be instituted in the

designated country or territory ("an external restraint order").

(4) An Ordinance under this paragraph may, in particular, include provision -

(a) which, for the purpose of facilitating the enforcement of any external order that may be made, has effect at times before there is an external order to be enforced;

(b) for matters corresponding to those for which provision is made by, or can be made under, paragraph 9(1) to (9) in relation to the orders to which that paragraph applies;

(c) for the proof of any matter relevant for the purposes of anything falling to be done in pursuance of the Ordinance.

(5) An Ordinance under this paragraph may also make provision with respect to anything falling to be done on behalf of the Bailiwick in a designated country or territory in relation to proceedings in that country or territory for or in connection with the making of an external order.

(6) An Ordinance under this paragraph may make different provision for different cases.

Constitution of Royal Court

11. (1) For the purposes of performing its functions under this Schedule (other than its functions as to the making of rules of court and its functions when sitting as an Ordinary Court) -

(a) the Royal Court shall be properly constituted if it consists of the Bailiff sitting unaccompanied by the Jurats; and

(b) the Royal Court may, where it consists of the Bailiff so sitting, sit in chambers.

(2) A function performed under subparagraph (1) shall be considered for all purposes to have been performed by the Royal Court; and any order or finding made or other thing done pursuant to subparagraph (1) shall have effect as if made or done by the Royal Court.

(3) The provisions of this paragraph are without prejudice to any provision of this Law conferring functions upon the Bailiff or, as the case may be, permitting matters to be heard in chambers.

SCHEDULE 3

Section 19

FORFEITURE OF TERRORIST CASH

PART 1 INTRODUCTORY

Terrorist cash

1. (1) This Schedule applies to cash ("terrorist cash") which -
 - (a) is within subsection (1)(a) or (b) of section 19, or
 - (b) is property earmarked as terrorist property.

- (2) "Cash" means -
 - (a) coins and notes in any currency,
 - (b) postal orders,
 - (c) cheques of any kind including travellers' cheques,
 - (d) bankers' drafts,
 - (e) bearer bonds or bearer shares, or
 - (f) any negotiable instrument found at any place in the Bailiwick.

PART 2
SEIZURE AND DETENTION

Seizure of cash

2. (1) An authorised officer may seize any cash if he has reasonable grounds for suspecting that it is terrorist cash.

(2) An authorised officer may also seize cash part of which he has reasonable grounds for suspecting to be terrorist cash if it is not reasonably practicable to seize only that part.

Detention of seized cash

3. (1) While the authorised officer continues to have reasonable grounds for his suspicion, cash seized under this Schedule may be detained initially for a period of 48 hours.

(2) The period for which the cash or any part of it may be detained may be extended by an order made by the Bailiff but the order may not authorise the detention of any of the cash -

- (a) beyond the end of the period of three months beginning with the date of the order, and
- (b) in the case of any further order under this paragraph, beyond the end of the period of two years beginning with the date of the first order.

(3) An order under subparagraph (2) must provide for notice to be given to persons affected by it.

(4) An application for an order under subparagraph (2) may be made by or on behalf of Her Majesty's Procureur and the Bailiff may make the order if satisfied, in relation to any cash to be further detained, that one of the following conditions is met.

(5) The first condition is that there are reasonable grounds for suspecting that the cash is intended to be used for the purposes of terrorism and that either -

(a) its continued detention is justified while its intended use is further investigated or consideration is given to bringing (in the Bailiwick or elsewhere) proceedings against any person for an offence with which the cash is connected, or

(b) proceedings against any person for an offence with which the cash is connected have been started and have not been concluded.

(6) The second condition is that there are reasonable grounds for suspecting that the cash consists of resources of an organisation which is a proscribed organisation and that either -

(a) its continued detention is justified while investigation is made into whether or not it consists of such resources or consideration is given to bringing (in the Bailiwick

or elsewhere) proceedings against any person for an offence with which the cash is connected, or

- (b) proceedings against any person for an offence with which the cash is connected have been started and have not been concluded.

(7) The third condition is that there are reasonable grounds for suspecting that the cash is property earmarked as terrorist property and that either-

- (a) its continued detention is justified while its derivation is further investigated or consideration is given to bringing (in the Bailiwick or elsewhere) proceedings against any person for an offence with which the cash is connected, or
- (b) proceedings against any person for an offence with which the cash is connected have been started and have not been concluded.

Payment of detained cash into an account

4. (1) If cash is detained under this Schedule for more than 48 hours, it is to be held in an interest bearing account and the interest accruing on it is to be added to it on its forfeiture or release.

(2) In the case of cash seized under paragraph 2(2), the authorised officer must, on paying it into the account, release so much of the cash then held in the account as is not attributable to terrorist cash.

(3) Subparagraph (1) does not apply if the cash is required as evidence of an offence or evidence in proceedings under this Schedule.

Release of detained cash

5. (1) This paragraph applies while any cash is detained under this Schedule.

(2) The Bailiff may direct the release of the whole or any part of the cash if satisfied, on an application by the person from whom it was seized, that the conditions in paragraph 3 for the detention of cash are no longer met in relation to the cash to be released.

(3) An authorised officer with the consent of Her Majesty's Procureur may, after notifying the Bailiff under whose order cash is being detained, release the whole or any part of it if satisfied that the detention of the cash to be released is no longer justified.

(4) But cash is not to be released -

(a) if an application for its forfeiture under paragraph 6, or for its release under paragraph 9, is made, until any proceedings in pursuance of the application (including any proceedings on appeal) are concluded,

(b) if (in the Bailiwick or elsewhere) proceedings are started against any person for an offence with which the cash is connected, until the proceedings are concluded.

PART 3
FORFEITURE

Forfeiture

6. (1) While cash is detained under this Schedule, an application for the forfeiture of the whole or any part of it may be made by or on behalf of Her Majesty's Procureur.

(2) The Royal Court sitting as an Ordinary Court may order the forfeiture of the cash or any part of it if satisfied that the cash or part is terrorist cash.

(3) In the case of property earmarked as terrorist property which belongs to joint tenants one of whom is an excepted joint owner, the order may not apply to so much of it as the Royal Court sitting as an Ordinary Court thinks is attributable to the excepted joint owner's share.

(4) An excepted joint owner is a joint tenant who obtained the property in circumstances in which it would not (as against him) be earmarked, and references to his share of the earmarked property are to so much of the property as would have been his if the joint tenancy had been severed.

(5) For the purposes of performing its functions under this paragraph -

(a) the Royal Court shall be properly constituted if it consists of the Bailiff sitting unaccompanied by the Jurats; and

(b) the Royal Court may, where it consists of the Bailiff so

sitting, sit in chambers.

(6) A function performed under subparagraph (5) shall be considered for all purposes to have been performed by the Royal Court; and any order or finding made or other thing done pursuant to subparagraph (5) shall have effect as if made or done by the Royal Court.

(7) The provisions of this paragraph are without prejudice to any provision of this Law conferring functions upon the Bailiff or, as the case may be, permitting matters to be heard in chambers.

Appeal against forfeiture

7. (1) Any party to proceedings in which an order is made under paragraph 6 ("a forfeiture order") who is aggrieved by the order may appeal to the Court of Appeal.

(2) An appeal under subparagraph (1) must be made -

(a) within the period of 30 days beginning with the date on which the order is made, or

(b) if subparagraph (5) applies, before the end of the period of 30 days beginning with the date on which the regulations under section 3(3)(b) of this Law referred to in that subparagraph come into force.

(3) The appeal is to be on a point of law.

(4) If the Court of Appeal upholds an appeal, it may order the release of the cash.

(5) Where a successful application for a forfeiture order under paragraph 6 relies (wholly or in part) on the fact that an organisation is proscribed, this subparagraph applies if -

- (a) a deproscription appeal under Part II of the Act of 2000 is allowed in respect of the organisation,
- (b) regulations are made under section 3(3)(b) of this Law in respect of the organisation, and
- (c) the forfeited cash was seized under this Schedule on or after the date of the refusal to deproscribe against which the appeal under Part II of the Act of 2000 was brought.

Application of forfeited cash

8. (1) Cash forfeited under this Schedule and any accrued interest on it shall be paid to the States of Guernsey.

(2) But it is not to be paid in -

- (a) before the end of the period within which an appeal under paragraph 7 may be made, or
- (b) if a person appeals under that paragraph, before the appeal is determined or otherwise disposed of.

PART 4
MISCELLANEOUS

Victims

9. (1) A person who claims that any cash detained under this Schedule, or any part of it, belongs to him may apply to the Bailiff for the cash or part to be released to him under this paragraph.

(2) The application may be made in the course of proceedings under paragraph 3 or 6 or at any other time.

(3) If it appears to the Bailiff that -

- (a) the applicant was deprived of the cash claimed, or of property which it represents, by criminal conduct,
- (b) the property he was deprived of was not, immediately before he was deprived of it, property obtained by or in return for criminal conduct and nor did it then represent such property, and
- (c) the cash claimed belongs to him,

the Bailiff may order the cash to be released to the applicant (instead of making a forfeiture order under paragraph 6, where the application is made in the course of proceedings under paragraph 6).

Compensation

10. (1) If no forfeiture order under paragraph 6 is made in respect of any cash detained under this Schedule, the person to whom the cash belongs or from whom it was seized may make an application to the Royal Court sitting as an Ordinary Court for compensation.

(2) If, for any period after the initial detention of the cash for 48 hours, the cash was not held in an interest bearing account while detained, the Royal Court sitting as an Ordinary Court may order an amount of compensation to be paid to the applicant.

(3) The amount of compensation to be paid under subparagraph (2) is the amount the Royal Court sitting as an Ordinary Court thinks would have been earned in interest in the period in question if the cash had been held in an interest bearing account.

(4) If the Royal Court sitting as an Ordinary Court is satisfied that, taking account of any interest to be paid under this Schedule or any amount to be paid under subparagraph (2), the applicant has suffered loss as a result of the detention of the cash and that the circumstances are exceptional, the Royal Court sitting as an Ordinary Court may order compensation (or additional compensation) to be paid to him.

(5) The amount of compensation to be paid under subparagraph (4) is the amount the Royal Court sitting as an Ordinary Court thinks reasonable, having regard to the loss suffered and any other relevant circumstances.

(6) Any compensation awarded is to be paid by the States of Guernsey.

(7) If a forfeiture order under paragraph 6 is made in respect only of a part of any cash detained under this Schedule, this paragraph has effect in relation to the other part.

(8) This paragraph does not apply if the Royal Court sitting as an Ordinary Court makes an order under paragraph 9.

PART 5

PROPERTY EARMARKED AS TERRORIST PROPERTY

Property obtained through terrorism

11. (1) A person obtains property through terrorism if he obtains property by or in return for acts of terrorism, or acts carried out for the purposes of terrorism.

(2) In deciding whether any property was obtained through terrorism -

(a) it is immaterial whether or not any money, goods or services were provided in order to put the person in question in a position to carry out the acts,

(b) it is not necessary to show that the act was of a particular kind if it is shown that the property was obtained through acts of one of a number of kinds, each of which would have been an act of terrorism, or an act carried out for the purposes of terrorism.

Property earmarked as terrorist property

12. (1) Property obtained through terrorism is earmarked as terrorist property.

(2) But if property obtained through terrorism has been disposed of (since it was so obtained), it is earmarked as terrorist property only if it is held by a person into whose hands it may be followed.

(3) Property may be followed into the hands of a person obtaining it on a disposal by -

(a) the person who obtained the property through terrorism, or

(b) a person into whose hands it may (by virtue of this subparagraph) be followed.

Tracing property

13. (1) Where property obtained through terrorism ("the original property") is or has been earmarked as terrorist property, property which represents the original property is also earmarked.

(2) If a person enters into a transaction by which -

(a) he disposes of the earmarked property, whether the original property or property which (by virtue of this Part) represents the original property, and

(b) he obtains other property in place of it,

the other property represents the original property.

(3) If a person disposes of property which represents the original property, the property may be followed into the hands of the person who obtains it (and it continues to represent the original property).

Mixing property

14. (1) Subparagraph (2) applies if a person's property which is earmarked as terrorist property is mixed with other property (whether his property or another's).

(2) The portion of the mixed property which is attributable to the property earmarked as terrorist property represents the property obtained through terrorism.

(3) Property earmarked as terrorist property is mixed with other property if (for example) it is used -

(a) to increase funds held in a bank account,

(b) in part payment for the acquisition of an asset,

(c) for the restoration or improvement of land,

(d) by a person holding a leasehold interest in the property to acquire the freehold.

Accruing profits

15. (1) This paragraph applies where a person who has property earmarked as terrorist property obtains further property consisting of profits accruing in respect of the earmarked property.

(2) The further property is to be treated as representing the property obtained through terrorism.

General exceptions

16. (1) If -

- (a) a person disposes of property earmarked as terrorist property, and
- (b) the person who obtains it on the disposal does so in good faith, for value and without notice that it was earmarked,

the property may not be followed into that person's hands and, accordingly, it ceases to be earmarked.

(2) If -

- (a) in pursuance of a judgment in civil proceedings (whether in the Bailiwick or elsewhere), the defendant makes a payment to the plaintiff or the plaintiff otherwise obtains property from the defendant,

- (b) the plaintiff's claim is based on the defendant's criminal conduct, and
- (c) apart from this subparagraph, the sum received, or the property obtained, by the plaintiff would be earmarked as terrorist property,

the property ceases to be earmarked.

(3) If -

- (a) a payment is made to a person in pursuance of a compensation order under section 1 of the Criminal Justice (Compensation) (Bailiwick of Guernsey) Law, 1990^s,
- (b) apart from this subparagraph, the sum received would be earmarked as terrorist property,

the property ceases to be earmarked.

(4) If -

- (a) a payment is made under section 33 of the Theft (Bailiwick of Guernsey) Law, 1983^t or a person otherwise obtains any property in pursuance of such an order, and

^s Ordres en Conseil Vol. XXXII, p. 77.

^t Ordres en Conseil Vol. XXVIII, p. 5.

- (b) apart from this subparagraph, the sum received, or the property obtained, would be earmarked as terrorist property,

the property ceases to be earmarked.

(5) Where -

- (a) a person enters into a transaction to which paragraph 13(2) applies, and
- (b) the disposal is one to which subparagraph (1) applies,

this paragraph does not affect the question whether (by virtue of paragraph 13(2)) any property obtained on the transaction in place of the property disposed of is earmarked.

PART 6 INTERPRETATION

Property

- 17.** (1) Property is all property wherever situated and includes -
- (a) money,
 - (b) all forms of property, real or personal, heritable or moveable,
-

(c) things in action and other intangible or incorporeal property.

(2) Any reference to a person's property (whether expressed as a reference to the property he holds or otherwise) is to be read as follows.

(3) In relation to land, it is a reference to any interest which he holds in the land.

(4) In relation to property other than land, it is a reference -

(a) to the property (if it belongs to him), or

(b) to any other interest which he holds in the property.

Obtaining and disposing of property

18. (1) Reference to a person disposing of his property include a reference -

(a) to his disposing of a part of it, or

(b) to his granting an interest in it,

(or to both); and references to the property disposed of are to any property obtained on the disposal.

(2) If a person grants an interest in property of his which is earmarked as terrorist property, the question whether the interest is also earmarked is

to be determined in the same manner as it is on any other disposal of earmarked property.

(3) A person who makes a payment to another is to be treated as making a disposal of his property to the other, whatever form the payment takes.

(4) Where a person's property passes to another under a will or intestacy or by operation of law, it is to be treated as disposed of by him to the other.

(5) A person is only to be treated as having obtained his property for value in a case where he gave unexecuted consideration if the consideration has become executed consideration.

General interpretation

19. (1) In this Schedule -

"authorised officer" means a police officer or an immigration officer,

"cash" has the meaning given by paragraph 1,

"criminal conduct" means conduct which constitutes an offence in any part of the Bailiwick, or would constitute an offence in any part of the Bailiwick if it occurred there,

"forfeiture order" has the meaning given by paragraph 6,

"interest" in relation to land means any legal estate and any other interest or power in or over land,

"interest", in relation to property other than land, includes any right (including a right to possession of the property),

"part" in relation to property includes a portion,

"property obtained through terrorism" has the meaning given by paragraph 11,

"property earmarked as terrorist property" is to be read in accordance with Part 5 of this Schedule,

"terrorist cash" has the meaning given by paragraph 1,

"value" means market value.

(2) Paragraphs 16 and 17 and the following provisions apply for the purposes of this Schedule.

(3) For the purpose of deciding whether or not property was earmarked as terrorist property at any time (including times before the commencement of this Law), it is to be assumed that this Schedule was in force at that and any other relevant time.

(4) References to anything done or intended to be done for the purposes of terrorism include anything done or intended to be done for the benefit of a proscribed organisation.

(5) An organisation's resources include any cash which is applied or made available, or is to be applied or made available, for use by the organisation.

(6) Proceedings against any person for an offence are concluded when -

(a) the person is convicted or acquitted, or

(b) the prosecution is discontinued.

SCHEDULE 4

Section 22

FREEZING ORDERS

Interpretation

1. References in this Schedule to a person specified in a freezing order as a person to whom or for whose benefit funds are not to be made available are to be read in accordance with section 21(4).

Funds

2. A freezing order may include provision that funds include gold, cash, deposits, securities (such as stocks, shares and debentures) and such other matters as the order may specify.

Making funds available

3. (1) A freezing order must include provision as to the meaning (in relation to funds) of making available to or for the benefit of a person.

(2) In particular, an order may provide that the expression includes-

- (a) allowing a person to withdraw from an account,
- (b) honouring a cheque payable to a person,
- (c) crediting a person's account with interest,

- (d) releasing documents of title (such as share certificates) held on a person's behalf,
- (e) making available the proceeds of realisation of a person's property,
- (f) making a payment to or for a person's benefit (for instance, under a contract or as a gift or under any enactment such as the enactments relating to social security),
- (g) such other acts as the order may specify.

Licences

4. (1) A freezing order must include -
- (a) provision for the granting of licences authorising funds to be made available,
 - (b) provision that a prohibition under the order is not to apply if funds are made available in accordance with a licence.
- (2) In particular, an order may provide -
- (a) that a licence may be granted generally or to a specified person or persons or description of persons,

- (b) that a licence may authorise funds to be made available to or for the benefit of persons generally or a specified person or persons or description of persons,
- (c) that a licence may authorise funds to be made available generally or for specified purposes,
- (d) that a licence may be granted in relation to funds generally or to funds of a specified description,
- (e) for a licence to be granted in pursuance of an application or without an application being made,
- (f) for the form and manner in which application for licences are to be made.
- (g) for licences to be granted by the Committee or a person authorised by the Committee,
- (h) for the form in which licences are to be granted,
- (i) for licences to be granted subject to conditions,
- (j) for licences to be of a defined or indefinite duration,
- (k) for the charging of a fee to cover the administrative costs of granting a licence,
- (l) for the variation and revocation of licences.

Information and documents

5. (1) A freezing order may include provision that a person -
- (a) must provide information if required to do so and it is reasonably needed for the purpose of ascertaining whether an offence under the order has been committed,
 - (b) must produce a document if required to do so and it is reasonably needed for that purpose.
- (2) In particular, an order may include -
- (a) provision that a requirement to provide information or to produce a document may be made by the Committee or a person authorised by the Committee,
 - (b) provision that information must be provided, and a document must be produced, within a reasonable period specified in the order and at a place specified by the person requiring it,
 - (c) provision that the provision of information is not to be taken to breach any restriction on the disclosure of information (however imposed),
 - (d) provision restricting the use to which information or a document may be put and the circumstances in which it may be disclosed,

- (e) provision that a requirement to provide information or produce a document does not apply to privileged information or a privileged document,
- (f) provision that information is privileged if the person would be entitled to refuse to provide it on grounds of legal professional privilege in proceedings in the Royal Court,
- (g) provision that a document is privileged if the person would be entitled to refuse to produce it on grounds of legal professional privilege in proceedings in the Royal Court,
- (h) provision that information or a document held with the intention of furthering a criminal purpose is not privileged.

Disclosure of information

6. (1) A freezing order may include provision requiring a person to disclose information as mentioned below if the following three conditions are satisfied.

(2) The first condition is that the person required to disclose is specified or falls within a description specified in the order.

(3) The second condition is that the person required to disclose knows or suspects, or has grounds for knowing or suspecting, that a person specified

in the freezing order as a person to whom or for whose benefit funds are not to be made available -

(a) is a customer of his or has been a customer of his at any time since the freezing order came into force, or

(b) is a person with whom he has dealings in the course of his business or has had such dealings at any time since the freezing order came into force

(4) The third condition is that the information -

(a) on which the knowledge or suspicion of the person required to disclose is based, or

(b) which gives grounds for his knowledge or suspicion,

came to him in the course of business carried out by a financial services business.

(5) The freezing order may require the person required to disclose to make a disclosure to the Committee of that information as soon as is practicable after it comes to him.

(6) The freezing order may include -

(a) provision that the disclosure of information is not to be taken to breach any restriction on the disclosure of information (however imposed),

- (b) provision restricting the use to which information may be put and the circumstances in which it may be disclosed by the Committee,
- (c) provision that the requirement to disclose information does not apply to privileged information,
- (d) provision that information is privileged if the person would be entitled to refuse to disclose it on grounds of legal professional privilege in proceedings in the Royal Court,
- (e) provision that information held with the intention of furthering a criminal purpose is not privileged.

Offences

7. (1) A freezing order may include any of the provisions set out in this paragraph.

(2) A person commits an offence if he fails to comply with a prohibition imposed by the order.

(3) A person commits an offence if he engages in an activity knowing or intending that it will enable or facilitate the commission by another person of an offence under a provision included under subparagraph (2).

(4) A person commits an offence if -

- (a) he fails without reasonable excuse to provide information, or to produce a document, in response to a requirement made under the order,
- (b) he provides information, or produces a document, which he knows is false in a material particular in response to such a requirement or with a view to obtaining a licence under the order,
- (c) he recklessly provides information, or produces a document, which is false in a material particular in response to such a requirement or with a view to obtaining a licence under the order,
- (d) he fails without reasonable excuse to disclose information as required by a provision included under paragraph 6.

(5) A person does not commit an offence under a provision included under subparagraph (2) or (3) if he proves that he did not know and had no reason to suppose that the person to whom or for whose benefit funds were made available, or were to be made available, was the person (or one of the persons) specified in the freezing order as a person to whom or for whose benefit funds are not to be made available.

(6) A person guilty of an offence under a provision included under subparagraph (2) or (3) is liable -

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 5 on the uniform scale or to both,
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine or to both.

(7) A person guilty of an offence under a provision included under subparagraph (4) is liable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 5 on the uniform scale or to both.

Offences by bodies corporate etc.

8. (1) A freezing order may include any of the provisions set out in this paragraph.

(2) If an offence under the order -

- (a) is committed by a body corporate, and
- (b) is proved to have been committed with the consent or connivance of an officer, or to be attributable to any neglect on his part,

he as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(3) These are officers of a body corporate -

- (a) a director, manager, secretary or other similar officer of the body,
- (b) any person purporting to act in any such capacity.

(4) If the affairs of a body corporate are managed by its members subparagraph (2) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were an officer of the body.

Compensation

9. (1) A freezing order may include provision for the award of compensation to or on behalf of a person on the grounds that he has suffered loss as a result of -

- (a) the order;
- (b) the fact that a licence has not been granted under the order;
- (c) the fact that a licence under the order has been granted on particular terms rather than others;
- (d) the fact that a licence under the order has been varied or revoked.

(2) In particular, the order may include -

- (a) provision about the person who may make a claim for an award;

- (b) provision about the person to whom a claim for an award is to be made;
 - (c) provision about the procedure for making and deciding a claim;
 - (d) provision that no compensation is to be awarded unless the claimant has behaved reasonably (which may include provision requiring him to mitigate his loss, for instance, by applying for a licence);
 - (e) provision that compensation must be awarded in specified circumstances or may be awarded in specified circumstances (which may include provision that the circumstances involve negligence or other fault);
 - (f) provision about the amount that may be awarded;
 - (g) provision about how compensation is to be paid (which may include provision for payment to a person other than the claimant).
- (3) Any compensation payable shall be paid by the States of Guernsey.

Committee's duty to give reasons

- 10.** A freezing order must include provision that if -

- (a) a person is specified in the order as a person to whom or for whose benefit funds are not to be made available, and
- (b) he makes a written request to the Committee to give him the reason why he is so specified,

as soon as is practicable the Committee must give the person the reason in writing.

SCHEDULE 5

Section 36

TERRORIST INVESTIGATIONS

Terrorist Investigations Information

1. (1) A police officer may apply to the Bailiff or the appropriate judicial officer for the issue of a warrant under this paragraph for the purposes of a terrorist investigation.

(2) A warrant under this paragraph shall authorise any police officer -

- (a) to enter the premises specified in the warrant,
- (b) to search the premises and any person found there, and
- (c) to seize, and retain any relevant material which is found on a search under paragraph (b).

(3) For the purpose of subparagraph (2)(c) material is relevant if the police officer has reasonable grounds for believing that -

- (a) it is likely to be of substantial value, whether by itself or together with other material, to a terrorist investigation, and
- (b) it must be seized in order to prevent it from being concealed, lost, damaged, altered or destroyed.

(4) A warrant under this paragraph shall not authorise -

- (a) the seizure and retention of items subject to legal privilege, or
- (b) a police officer to require a person to remove any clothing in public except for headgear, footwear, an outer coat, a jacket or gloves.

(5) Subject to paragraph 2, the Bailiff or the appropriate judicial officer may grant an application under this paragraph if satisfied -

- (a) that the warrant is sought for the purposes of a terrorist investigation,
- (b) that there are reasonable grounds for believing that there is material on premises specified in the application which is likely to be of substantial value, whether by itself or together with other material, to a terrorist investigation, and
- (c) that the issue of a warrant is likely to be necessary in the circumstances of the case.

2. (1) This paragraph applies where an application is made under paragraph 1 and -

- (a) the application is made by an officer of at least the rank of chief inspector or a customs officer of at least the grade of surveyor,

- (b) the application does not relate to residential premises,
and
- (c) the Bailiff or the appropriate judicial officer to whom
the application is made is not satisfied of the matter
referred to in paragraph 1(5)(c).

(2) The Bailiff or the appropriate judicial officer may grant the application if satisfied of the matters referred to in paragraph 1(5)(a) and (b).

(3) Where a warrant under paragraph 1 is issued by virtue of this paragraph, the powers under paragraph 1(2)(a) and (b) are exercisable only within the period of 24 hours beginning with the time when the warrant is issued.

(4) For the purpose of subparagraph (1) "residential premises" means any premises which the officer making the application has reasonable grounds for believing are used wholly or mainly as a dwelling.

3. (1) Subject to subparagraph (2), an officer of the Island police force of at least the rank of chief inspector or a customs officer of at least the grade of surveyor may by a written authority signed by him authorise a search of specified premises which are wholly or partly within a cordoned area.

(2) A police officer who is not of the rank required by subparagraph (1) may give an authorisation under this paragraph if he considers it necessary by reason of urgency.

(3) An authorisation under this paragraph shall authorise any police officer -

- (a) to enter the premises specified in the authority,
- (b) to search the premises and any person found there, and
- (c) to seize and retain any relevant material (within the meaning of paragraph 1(3) which is found on a search under paragraph (b).

(4) The powers under subparagraph (3)(a) and (b) may be exercised -

- (a) on one or more occasions, and
- (b) at any time during the period when the designation of the cordoned area under section 32 has effect.

(5) An authorisation under this paragraph shall not authorise -

- (a) the seizure and retention of items subject to legal privilege,
- (b) a police officer to require a person to remove any clothing in public except for headgear, footwear, an outer coat, a jacket or gloves.

(6) An authorisation under this paragraph shall not be given unless the person giving it has reasonable grounds for believing that there is material to be found on the premises which is likely to be of substantial value, whether by itself or together with other material, to a terrorist investigation.

(7) A person commits an offence if he wilfully obstructs a search under this paragraph.

(8) A person guilty of an offence under subparagraph (7) shall be liable on summary conviction to -

- (a) imprisonment for a term not exceeding three months,
- (b) a fine not exceeding level 4 on the standard scale, or
- (c) both.

Order for production of material

4. (1) A police officer may, for the purposes of a terrorist investigation, apply to the Bailiff or the appropriate judicial officer for an order under subparagraph (2) in relation to particular material or material of a particular description.

(2) If on such an application the Bailiff or the appropriate judicial officer is satisfied on information on oath that the conditions referred to in subparagraph (3) are fulfilled, he may make an order that the person who appears to him to be in possession of the material to which the application relates shall -

- (a) produce it to a police officer for him to take away; or
- (b) give a police officer access to it within such period as the order may specify or, if the material is not in that person's possession (and will not come into his

possession within that period), that he shall state to the best of his knowledge and belief where it is.

- (3) The conditions referred to in subparagraph (2) are -
- (a) that a terrorist investigation is being carried out and that there are reasonable grounds for believing that the material is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made;
 - (b) that there are reasonable grounds for believing that it is in the public interest, having regard -
 - (i) to the benefit likely to accrue to the investigation if the material is obtained; and
 - (ii) to the circumstances under which the person in possession of the material holds it,that the material should be produced or that access to it should be given; and
 - (c) that the material does not consist of or include items subject to legal professional privilege.

(4) An order under subparagraph (2) may relate to material expected to come into existence or to become available to the person concerned in the period of 28 days beginning with the date of the order; and in this case the order

shall require that person to notify a named police officer as soon as possible after the material comes into existence or becomes available to that person.

(5) The period to be specified in an order under subparagraph (2) shall be 7 days from the date of the order or, in the case of an order made by virtue of subparagraph (4), from the notification to the officer of police, unless it appears in either case to the Bailiff or the appropriate judicial officer that a longer or shorter period would be appropriate in all the circumstances.

(6) Where the Bailiff or the appropriate judicial officer makes an order under subparagraph (2)(b) in relation to material on any premises, he may, on the application of a police officer, order any person who appears to him to be entitled to grant entry to the premises to allow a police officer to enter the premises to obtain access to the material.

5. (1) Provision may be made by rules of court (made by the Royal Court, the Court of Alderney or, as the case may be, the Court of the Seneschal) as to -

(a) the discharge and variation of orders made under paragraph 4;

(b) proceedings relating to such orders.

(2) Pending the making of such rules -

(a) an order under paragraph 4 may be discharged or varied by the Bailiff or the appropriate judicial officer on written application by any person subject to the order to Her Majesty's Greffier, in the case of

Guernsey, the Clerk of the Court of Alderney, in the case of Alderney, or the Greffier, in the case of Sark;

- (b) unless the Bailiff or the appropriate judicial officer 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 Her Majesty's Procureur.

(3) Where the material to which an application under paragraph 4 relates consists of information contained in a computer -

- (a) an order under paragraph 4(2)(a) shall have effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible; and
- (b) an order under paragraph 4(2)(b) shall have effect as an order to give access to the material in a form in which it is visible and legible.

(4) An order under paragraph 4 -

- (a) confers no right to production of, or access to, items subject to legal professional privilege;
- (b) has effect notwithstanding any obligation as to secrecy or other restriction on the disclosure of information imposed by statute or otherwise (which obligation or

restriction is not breached by compliance with the order).

(5) An order may be made under paragraph 4 in relation to material in the possession of a Committee of the States of Guernsey, the States of Alderney or the Chief Pleas of Sark; and any such order (which shall be served as if the proceedings were civil proceedings against the Committee in question) may require any officer of the Committee, whether named in the order or not, who may be in possession of the material concerned to comply with it.

Explanation of seized or produced material

6. (1) The Bailiff or the appropriate judicial officer may, on an application made by a police officer, order any person specified in the order to provide an explanation of any material seized in pursuance of a warrant under paragraph 1 or produced or made available to a police officer under paragraph 4.

(2) A person shall not under this paragraph be required to disclose any information which he would be entitled to refuse to disclose on grounds of legal professional privilege, except that a lawyer may be required to furnish the name and address of his client.

(3) A statement by a person in response to a requirement imposed under this paragraph may only be used in evidence against him -

(a) on a prosecution for an offence under subparagraph (4); or

- (b) on a prosecution for some other offence where, in giving evidence, he makes a statement inconsistent with it.

(4) A person who, in purported compliance with a requirement under this paragraph -

- (a) makes a statement which he knows to be false or misleading in a material particular; or
- (b) recklessly makes a statement which is false or misleading in a material particular,

is guilty of an offence and liable -

- (i) on conviction on indictment, to imprisonment for a term not exceeding 2 years, to a fine or to both;
- (ii) on summary conviction, to imprisonment for a term not exceeding 6 months, to a fine not exceeding twice level 5 on the uniform scale or to both.

(5) Paragraph 5(1), (2), (4)(b) and (5) applies to orders under this paragraph as it applies to orders under paragraph 4.

Urgent cases

7. (1) If a police officer of the Island police force of at least the rank of superintendent has reasonable grounds for believing that the case is one of great emergency and that in the public interest immediate action is necessary, he may, by a written order signed by him, give to any police officer the authority which may be given by a search warrant under paragraph 1.

(2) Where an authority is given under this paragraph particulars of the case shall be notified as soon as practicable to the Bailiff and Her Majesty's Procureur.

(3) An order under this paragraph may not authorise a search for items subject to legal professional privilege.

(4) If a police officer of at least the rank of superintendent has reasonable grounds for believing that the case is such as is mentioned in subparagraph (1), he may by written notice signed by him require any person specified in the notice to provide an explanation of any material seized in pursuance of an order under this paragraph.

(5) A person who without reasonable excuse fails to comply with a notice under subparagraph (4) is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding 6 months, to a fine not exceeding twice level 5 on the uniform scale or to both.

(6) Paragraphs 5(4)(b) and 6(2), (3) and (4) apply to a requirement imposed under subparagraph (4) as they apply to a requirement under paragraph 5.

Supplementary

8. (1) A police officer may, if necessary, use reasonable force for the purpose of exercising any power conferred on him by this Schedule.

(2) A search of a person under this Schedule may only be carried out by a person of the same sex.

9. No application may be made under paragraph 1(1), 2(1), 4(1), 4(6) or 6(1) by a police officer without the consent of Her Majesty's Procureur.

SCHEDULE 6

Section 37

FINANCIAL INFORMATION

Orders

1. (1) Where an order has been made under this paragraph in relation to a terrorist investigation, a police officer may require a financial services business to which the order applies to provide customer information for the purposes of the investigation.

(2) The order may provide that it applies to -

(a) all financial services businesses,

(b) a particular description or particular descriptions of financial services businesses, or

(c) a particular financial services business or particular financial services businesses.

(3) The information shall be provided -

(a) in such manner and within such time as the police officer may specify, and

(b) notwithstanding any restriction on the disclosure of information imposed by statute or otherwise (which restriction is not breached by compliance with the requirement).

(4) A financial services business which fails to comply with a requirement under this paragraph shall be guilty of an offence.

(5) It is a defence for a financial services business charged with an offence under subparagraph (4) to prove -

(a) that the information required was not in the financial services business's possession, or

(b) that it was not reasonably practicable for the business to comply with the requirement.

(6) A financial services business guilty of an offence under subparagraph (4) shall be liable on summary conviction to a fine not exceeding level 5 on the uniform scale.

Procedure

2. An order under paragraph 1 may be made on the application of a police officer.

3. An order under paragraph 1 may be made only by the Bailiff or the appropriate judicial officer.

4. An application for an order under paragraph 1 may only be made with the consent of Her Majesty's Procureur.

5. Rules of court (made by the Royal Court, the Court of Alderney or, as the case may be, the Court of the Seneschal) may make provision about the procedure for an application under paragraph 1.

Criteria for making order

6. An order under paragraph 1 may be made only if the person making it is satisfied that -

- (a) the order is sought for the purposes of a terrorist investigation,
- (b) the tracing of terrorist property is desirable for the purposes of the investigation, and
- (c) the order will enhance the effectiveness of the investigation.

Customer information

7. (1) In this Schedule "customer information" means (subject to subparagraph (3)) -

- (a) information as to whether a business relationship exists or existed between a financial services business and a particular person ("a customer"),
- (b) a customer's account number,
- (c) a customer's full name,

- (d) a customer's date of birth,
- (e) a customer's address or former address,
- (f) the date on which a business relationship between a financial services business and a customer begins or ends,
- (g) any evidence of a customer's identity obtained by a financial services business in pursuance of or for the purposes of any legislation relating to money laundering, and
- (h) the identity of a person sharing an account with a customer.

(2) For the purposes of this Schedule there is a business relationship between a financial services business and a person if (and only if) -

- (a) there is an arrangement between them designed to facilitate the carrying out of frequent or regular transactions between them, and
- (b) the total amount of payments to be made in the course of the arrangement is neither known nor capable of being ascertained when the arrangement is made.

(3) The Committee may by regulation provide for a class of information -

- (a) to be customer information for the purposes of this Schedule, or
- (b) to cease to be customer information for the purposes of this Schedule.

Offence by body corporate, etc.

8. (1) This paragraph applies where an offence under paragraph 1(4) is committed by a financial services business and it is proved that the offence-

- (a) was committed with the consent or connivance of an officer of the financial services business, or
- (b) was attributable to neglect on the part of an officer of the institution.

(2) The officer, as well as the financial services business, shall be guilty of the offence.

(3) Where an individual is convicted of an offence under paragraph 1(4) by virtue of this paragraph, he shall be liable on summary conviction to -

- (a) imprisonment for a term not exceeding six months,
- (b) a fine not exceeding level 5 on the uniform scale, or
- (c) both.

(4) In the case of a financial services business which is a body corporate, in this paragraph "officer" includes -

- (a) a director, manager, secretary or other similar officer,
- (b) a person purporting to act as a director, manager, secretary or other similar officer, and
- (c) if the affairs of the body are managed by its members, a member.

(5) In the case of an institution which is a partnership, in this paragraph "officer" means a partner.

(6) In the case of a financial services business which is an unincorporated association (other than a partnership) in this paragraph "officer" means a person concerned in the management or control of the association.

Self-incrimination

9. (1) Customer information provided by a financial services business under this Schedule shall not be admissible in evidence in criminal proceedings against the business or any of its officers or employees.

(2) Subparagraph (1) shall not apply in relation to proceedings for an offence under paragraph 1(4) (including proceedings brought by virtue of paragraph 8).

SCHEDULE 7

Section 39

ACCOUNT MONITORING ORDERS

Account monitoring orders

1. (1) The Bailiff or the appropriate judicial officer may, on an application made to him by a police officer, make an account monitoring order if he is satisfied that -

- (a) the order is sought for the purposes of a terrorist investigation,
- (b) the tracing of terrorist property is desirable for the purposes of the investigation, and
- (c) the order will enhance the effectiveness of the investigation.

(2) The application for an account monitoring order must state that the order is sought against the financial services business specified in the application in relation to information which -

- (a) relates to an account or accounts held at the financial services business by the person specified in the application (whether solely or jointly with another), and
- (b) is of the description so specified.

(3) The application for an account monitoring order may specify information relating to -

- (a) all accounts held by the person specified in the application for the order at the financial services business so specified,
- (b) a particular description, or particular descriptions, of accounts so held, or
- (c) a particular account, or particular accounts, so held.

(4) An account monitoring order is an order that the financial services business specified in the application for the order must -

- (a) for the period specified in the order,
- (b) in the manner so specified,
- (c) at or by the time or times so specified, and
- (d) at the place or places so specified,

provide information of the description specified in the application to a police officer.

(5) The period stated in an account monitoring order must not exceed the period of 90 days beginning with the day on which the order is made.

Applications

2. (1) An application for an account monitoring order may be made ex parte to the Bailiff or the appropriate judicial officer in chambers.

(2) The description of information specified in an application for an account monitoring order may be varied by the person who made the application.

(3) The description of information specified in it may be varied by a different police officer.

(4) An application for an account monitoring order may only be made with the consent of Her Majesty's Procureur.

Discharge or variation

3. (1) An application to discharge or vary an account monitoring order may be made to the Bailiff by -

(a) a police officer with the consent of Her Majesty's Procureur;

(b) any person affected by the order.

(2) The Bailiff -

(a) may discharge the order,

(b) may vary the order.

4. Rules of Court (made by the Royal Court, the Court of Alderney or, as the case may be, by the Court of the Seneschal) may make provision as to the practice and procedure to be followed in connection with proceedings relating to account monitoring orders.

Effect of orders

5. (1) An account monitoring order has effect as if it were an order of the Royal Court.

(2) An account monitoring order has effect in spite of any restriction on the disclosure of information, however imposed (which restriction is not breached by compliance with the order).

Statements

6. (1) A statement made by a financial services business in response to an account monitoring order may not be used in evidence against it in criminal proceedings.

(2) But subparagraph (1) does not apply -

- (a) in the case of proceedings for contempt of court,
- (b) in the case of proceedings under section 18 where the financial services business has been convicted of an offence under any of sections 8 to 11,
- (c) on a prosecution for an offence where, in giving evidence, the financial services business makes a

statement inconsistent with the statement mentioned in subparagraph (1).

(3) A statement may not be used by virtue of subparagraph (2)(c) against a financial services business unless -

(a) evidence relating to it is adduced, or

(b) a question relating to it is asked,

by or on behalf of the financial services business in the proceedings arising out of the prosecution.

SCHEDULE 8

Section 54

PORT AND BORDER CONTROLS

Interpretation

1. (1) In this Schedule "examining officer" means any of the following -

- (a) a police officer, or
- (b) an immigration officer.

(2) In this Schedule "port" includes an airport.

Power to stop, question and detain

2. (1) An examining officer may question a person to whom this paragraph applies for the purpose of determining whether he appears to be a person falling within section 41(1)(b).

(2) This paragraph applies to a person if -

- (a) he is at a port or in a ship within the Bailiwick's territorial waters, and
- (b) the examining officer believes that the person's presence at the port or in the ship is connected with his entering or leaving the Bailiwick or his travelling by air or sea within the Bailiwick.

(3) This paragraph also applies to a person on -

(a) a ship which has arrived in the Bailiwick, or

(b) an aircraft which has arrived in any place in the Bailiwick (whether from within or outside the Bailiwick).

(4) An examining officer may exercise his powers under this paragraph whether or not he has grounds for suspecting that a person falls within section 41(1)(b).

3. A person who is questioned under paragraph 2 must -

(a) give the examining officer any information in his possession which the officer requests;

(b) give the examining officer on request either a valid passport which includes a photograph or another document which establishes his identity;

(c) declare whether he has with him documents of a kind specified by the examining officer;

(d) give the examining officer on request any document which he has with him and which is of a kind specified by the officer.

4. (1) For the purposes of exercising a power under paragraph 2 an examining officer may -

(a) stop a person or vehicle;

(b) detain a person.

(2) For the purpose of detaining a person under this paragraph, an examining officer may authorise the person's removal from a ship, aircraft or vehicle.

(3) Where a person is detained under this paragraph the provisions of Part I of Schedule 9 (treatment) shall apply.

(4) A person detained under this paragraph shall (unless detained under any other power) be released not later than the end of the period of nine hours beginning with the time when his examination begins.

Searches

5. For the purpose of satisfying himself whether there are any persons whom he may wish to question under paragraph 2 an examining officer may -

(a) search a ship or aircraft;

(b) search anything on a ship or aircraft;

(c) search anything which he reasonably believes has been, or is about to be, on a ship or aircraft.

6. (1) An examining officer who questions a person under paragraph 2 may, for the purpose of determining whether he falls within section 41(1)(b) -

- (a) search the person;
- (b) search anything which he has with him, or which belongs to him, and which is on a ship or aircraft;
- (c) search anything which he has with him, or which belongs to him, and which the examining officer reasonably believes has been, or is about to be, on a ship or aircraft;
- (d) search a ship or aircraft for anything falling within paragraph (b).

(2) A search of a person under this paragraph must be carried out by someone of the same sex.

7. (1) An examining officer may examine goods to which this paragraph applies for the purpose of determining whether they have been used in the commission, preparation or instigation of acts of terrorism.

(2) This paragraph applies to -

- (a) goods which have arrived in or are about to leave the Bailiwick on a ship, and
- (b) goods which have arrived at or are about to leave any place in the Bailiwick on an aircraft (whether the place

they have come from or are going to is within or outside the Bailiwick).

(3) In this paragraph "goods" includes -

- (a) property of any description, and
- (b) containers.

(4) An examining officer may board a ship or aircraft or enter a vehicle for the purpose of determining whether to exercise his power under this paragraph.

8. (1) An examining officer may authorise a person to carry out on his behalf a search or examination under any of paragraphs 5 to 7.

(2) A person authorised under this paragraph shall be treated as an examining officer for the purposes of paragraphs 7(4) and 9 of this Schedule.

Detention of property

9. (1) This paragraph applies to anything which -

- (a) is given to an examining officer in accordance with paragraph 3(d),
- (b) is searched or found on a search under paragraph 6, or
- (c) is examined under paragraph 7.

- (2) An examining officer may detain the thing -
- (a) for the purpose of examination, for a period not exceeding seven days beginning with the day on which the detention commences,
 - (b) while he believes that it may be needed for use as evidence in criminal proceedings, or
 - (c) while he believes that it may be needed in connection with a decision by the Lieutenant-Governor whether to make a deportation order under the Immigration Act 1971.

Designated ports

10. (1) This paragraph applies to any journey to the Bailiwick.

(2) Where a ship or aircraft is employed to carry passengers for reward on a journey to which this paragraph applies the owners or agents of the ship or aircraft shall not arrange for it to call at a port in the Bailiwick for the purpose of disembarking or embarking passengers unless -

- (a) the port is a designated port, or
- (b) an examining officer approves the arrangement.

(3) Where an aircraft is employed on a journey to which this paragraph applies otherwise than to carry passengers for reward, the captain of the aircraft shall not permit it to call at or leave a port in the Bailiwick unless -

- (a) the port is a designated port, or
 - (b) he gives at least 12 hours' notice in writing to a police officer.
- (4) A designated port is a port which appears in the Table at the end of this Schedule.
- (5) The States Emergency Council may by order -
- (a) add an entry to the Table;
 - (b) remove an entry from the Table.

Embarkation and disembarkation

11. (1) The Lieutenant-Governor may by notice in writing to the owners or agents of ships or aircraft -

- (a) designate control areas in any port in the Bailiwick;
- (b) specify conditions for or restrictions on the embarkation or disembarkation of passengers in a control area.

(2) Where owners or agents of a ship or aircraft receive notice under subparagraph (1) in relation to a port they shall take all reasonable steps to ensure, in respect of the ship or aircraft -

- (a) that passengers do not embark or disembark at the port outside a control area, and
- (b) that any specified conditions are met and any specified restrictions are complied with.

12. (1) This paragraph applies to a ship employed to carry passengers for reward, or an aircraft, which -

- (a) arrives in the Bailiwick; or
- (b) leaves the Bailiwick.

(2) The captain shall ensure -

- (a) that passengers and members of the crew do not disembark at a port in the Bailiwick unless either they have been examined by an examining officer or they disembark in accordance with arrangements approved by an examining officer;
- (b) that passengers and members of the crew do not embark at a port in the Bailiwick except in accordance with arrangements approved by an examining officer;
- (c) where a person is to be examined under this Schedule on board the ship or aircraft, that he is presented for examination in an orderly manner.

(3) Where paragraph 27 of Schedule 2 to the Immigration Act 1971 (disembarkation requirements on arrival in the Bailiwick) applies, the requirements of subparagraph (2)(a) above are in addition to the requirements of paragraph 27 of that Schedule.

Carding

13. (1) A person who disembarks from or embarks on a ship or aircraft in the Bailiwick which has come from or is going to a place outside the Bailiwick shall, if so required by an examining officer, complete and produce to that officer a landing or (as the case may be) an embarkation card in such form as the Lieutenant-Governor may direct, which, where the ship or aircraft is employed to carry passengers for reward, shall be supplied for the purpose to that person by the owners or agents of that ship or aircraft or an examining officer.

(2) An examining officer may require the owners or agents of a ship or aircraft employed to carry passengers for reward to supply their passengers with cards in the form required by virtue of subparagraph (1).

Provision of passenger information

14. (1) This paragraph applies to a ship or aircraft which arrives or is expected to arrive in the Bailiwick.

(2) If an examining officer gives the owners or agents of a ship or aircraft to which this paragraph applies a written request to provide specified information, the owners or agents shall comply with the request as soon as is reasonably practicable.

(3) A request to an owner or agent may relate -

- (a) to a particular ship or aircraft,
- (b) to all ships or aircraft of the owner or agent to which this paragraph applies, or
- (c) to specified ships or aircraft.

(4) Information may be specified in a request only if it is of a kind which is prescribed by the Lieutenant-Governor and which relates -

- (a) to passengers,
- (b) to crew, or
- (c) to vehicles belonging to passengers or crew.

(5) A passenger or member of the crew on a ship or aircraft shall give the captain any information required for the purpose of enabling the owners or agents to comply with a request under this paragraph.

(6) Subparagraphs (2) and (5) shall not require the provision of information which is required to be provided under or by virtue of paragraph 27(2) of Schedule 2 to the Immigration Act 1971.

Offences

- 15.** (1) A person commits an offence if he -

- (a) wilfully fails to comply with a duty imposed under or by virtue of this Schedule,
- (b) wilfully contravenes a prohibition imposed under or by virtue of this Schedule, or
- (c) wilfully obstructs, or seeks to frustrate, a search or examination under or by virtue of this Schedule.

(2) A person guilty of an offence under this paragraph shall be liable on summary conviction to -

- (a) imprisonment for a term not exceeding three months,
- (b) a fine not exceeding level 4 on the uniform scale, or
- (c) both.

TABLE
DESIGNATED PORTS

Seaports

Saint Peter Port Harbour, Guernsey
Saint Sampson's Harbour, Guernsey
Beaucette Marina, Guernsey
Braye Harbour, Alderney
Little Crabby Harbour, Alderney
The Old Harbour, Alderney
Maseline Harbour, Sark
Creux Harbour, Sark

Airports

La Villiaze Airport, Guernsey
Alderney Airport.

SCHEDULE 9

Section 42

DETENTION

PART I

TREATMENT OF PERSONS DETAINED UNDER SECTION 42
OR SCHEDULE 8

Place of detention

1. (1) The States Committee for Home Affairs shall designate places at which persons may be detained under Schedule 8 or section 42.

(2) In this Schedule a reference to a police station includes a reference to any place which the States Committee for Home Affairs has designated under subparagraph (1) as a place where a person may be detained under section 42.

(3) Where a person is detained under Schedule 8, he may be taken in the custody of an examining officer or of a person acting under an examining officer's authority to and from any place where his attendance is required for the purpose of -

- (a) his examination under that Schedule,
- (b) establishing his nationality or citizenship, or
- (c) making arrangements for his admission to a country or territory outside the Bailiwick.

(4) A police officer who arrests a person under section 42 shall take him as soon as is reasonably practicable to a police station which the police officer considers the most appropriate.

(5) In the event of a person being arrested in either of the Islands of Alderney or Sark a police officer shall arrange for the transfer of the person arrested to a police station in the Island of Guernsey as soon as practicable.

(6) In this paragraph "examining officer" has the meaning given in Schedule 8.

Identification

2. (1) An authorised person may take any steps which are reasonably necessary for -

- (a) photographing the detained person,
- (b) measuring him, or
- (c) identifying him.

(2) In subparagraph (1) "authorised person" means any of the following -

- (a) a police officer,
- (b) a prison officer,

(c) a person authorised by the States Committee for Home Affairs, and

(d) in the case of a person detained under Schedule 8, an examining officer (within the meaning of that Schedule).

(3) This paragraph does not confer the power to take fingerprints, non-intimate samples or intimate samples (within the meaning given by paragraph 15 below).

Recording of interviews

3. (1) The States Committee for Home Affairs shall -

(a) issue a code of practice about the audio recording of interviews to which this paragraph applies, and

(b) make regulations requiring the audio recording of interviews to which this paragraph applies in accordance with any relevant code of practice under paragraph (a).

(2) The States Committee for Home Affairs may revise the code and issue the revised code.

(3) The States Committee for Home Affairs may by regulation require the video recording of interviews to which this paragraph applies.

(4) Regulations under subparagraph (3) shall specify whether the video recording which they require is to be silent or with sound.

(5) Where regulations are made under subparagraph (3) -

(a) the States Committee for Home Affairs shall issue a code of practice about the video recording of interviews to which the regulations apply, and

(b) the regulations shall require the interviews to be video recorded in accordance with any relevant code of practice under clause (a).

(6) Where the States Committee for Home Affairs has made regulations under subparagraph (3) requiring certain interviews to be video recorded with sound, it need not, but may, make an order under subparagraph (1)(b) in relation to those interviews.

(7) This paragraph applies to any interview by a police officer of a person detained under section 42 or Schedule 8 if the interview takes place in a police station.

(8) The failure by a police officer to observe a provision of the code shall not of itself make him liable to criminal or civil proceedings.

(9) The code -

(a) shall be admissible in evidence in criminal and civil proceedings, and

- (b) shall be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant.

Status

4. A detained person shall be deemed to be in legal custody throughout the period of his detention.

Rights of a person detained

5. (1) Subject to paragraph 7, a person detained under Schedule 8 or section 42 at a police station shall be entitled, if he so requests, to have one named person informed as soon as is reasonably practicable that he is being detained there.

(2) The person named must be -

- (a) a friend of the detained person,
- (b) a relative, or
- (c) a person who is known to the detained person or who is likely to take an interest in his welfare.

(3) Where a detained person is transferred from one police station to another, he shall be entitled to exercise the right under this paragraph in respect of the police station to which he is transferred.

6. (1) Subject to paragraphs 7 and 8, a person detained under Schedule 8 or section 42 at a police station shall be entitled, if he so requests, to consult an Advocate as soon as is reasonably practicable, privately and at any time.

(2) Where a request is made under subparagraph (1), the request and the time at which it was made shall be recorded.

7. (1) Subject to subparagraph (2), an officer of the Island police force of at least the rank of Chief Inspector may authorise a delay -

(a) in informing the person named by a detained person under paragraph 5;

(b) in permitting a detained person to consult an Advocate under paragraph 6.

(2) But where a person is detained under section 42 he must be permitted to exercise his rights under paragraphs 5 and 6 before the end of the period mentioned in subsection (3) of that section.

(3) Subject to subparagraph (5), an officer may give an authorisation under subparagraph (1) only if he has reasonable grounds for believing-

(a) in the case of an authorisation under subparagraph (1)(a), that informing the named person of the detained person's detention will have any of the consequences specified in subparagraph (4), or

(b) in the case of an authorisation under subparagraph (1)(b), that the exercise of the right under paragraph 6

at the time when the detained person desires to exercise it will have any of the consequences specified in subparagraph (4).

(4) Those consequences are -

- (a) interferences with or harm to evidence of a serious offence,
- (b) interference with or physical injury to any person,
- (c) the alerting of persons who are suspected of having committed a serious offence but who have not been arrested for it,
- (d) the hindering of the recovery of property obtained as a result of a serious offence or in respect of which a forfeiture order could be made under section 18,
- (e) interference with the gathering of information about the commission, preparation or instigation of acts of terrorism,
- (f) the alerting of a person and thereby making it more difficult to prevent an act of terrorism, and
- (g) the alerting of a person and thereby making it more difficult to secure a person's apprehension, prosecution or conviction in connection with the commission, preparation or instigation of an act of terrorism.

(5) An officer may also give an authorisation under subparagraph (1) if he has reasonable grounds for believing that -

- (a) the detained person has committed an offence to which the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 applies,
- (b) the detained person has benefited from the offence within the meaning of that Law, and
- (c) by informing the named person of the detained person's detention (in the case of an authorisation under subparagraph (1)(a)), or by the exercise of the right under paragraph 6 (in the case of an authorisation under subparagraph (1)(b)), the recovery of the value of that benefit will be hindered.

(6) If an authorisation under subparagraph (1) is given orally, the person giving it shall confirm it in writing as soon as is reasonably practicable.

(7) Where an authorisation under subparagraph (1) is given -

- (a) the detained person shall be told the reason for the delay as soon as is reasonably practicable, and
- (b) the reason shall be recorded as soon as is reasonably practicable.

(8) Where the reason for authorising delay ceases to subsist there may be no further delay in permitting the exercise of the right in the absence of a further authorisation under subparagraph (1).

Meaning of "serious offence"

8. This paragraph has effect for determining whether an offence is a serious offence for the purposes of paragraph 7.

(1) The following offences are always serious -

(a) treason,

(b) murder,

(c) manslaughter,

(d) rape, and

(e) kidnapping.

(f) any of the offences mentioned in paragraphs (a) to (e) of section 1(1) of the Drug Trafficking (Bailiwick of Guernsey) Law, 2000.

(2) Subject to subparagraphs (3) and (4) any other offence is serious only if its commission -

(a) has led to any of the consequences specified in subparagraph (4); or

(b) is intended or is likely to lead to any of those consequences.

(3) An offence which consists of making a threat is serious if carrying out the threat would be likely to lead to any of the consequences specified in subparagraph (4).

(4) The consequences mentioned in subsections (2) and (3) are -

(a) serious harm to the security of the Bailiwick or to public order;

(b) serious interference with the administration of justice or with the investigation of offences or of a particular offence;

(c) the death of any person;

(d) serious injury to any person;

(e) substantial financial gain to any person; and

(f) serious financial loss to any person.

(5) Loss is serious for the purposes of this paragraph if, having regard to all the circumstances, it is serious for the person who suffers it.

(6) In this paragraph "injury" includes any disease and any impairment of a person's physical or mental condition.

9. (1) A direction under this paragraph may provide that a detained person who wishes to exercise the right under paragraph 6 may consult an Advocate only in the sight and hearing of a qualified officer.

(2) A direction under this paragraph may be given where the person is detained at a police station by an officer of the Island police force of at least the rank of superintendent.

(3) A direction under this paragraph may be given only if the officer giving it has reasonable grounds for believing that, unless the direction is given, the exercise of the right by the detained person will have any of the consequences specified in paragraph 7(4) or the consequence specified in paragraph 7(5)(c).

(4) In this paragraph "a qualified officer" means an officer of the Island police force who -

(a) is of at least the rank of inspector,

(b) is of the uniformed branch of the Island police force,
and

(c) in the opinion of the officer giving the direction, has no connection with the detained person's case.

(5) A direction under this paragraph shall cease to have effect once the reason for giving it ceases to subsist.

10. (1) Fingerprints may be taken from the detained person only if they are taken by a police officer -

- (a) with the appropriate consent given in writing, or
- (b) without that consent under subparagraph (3).

(2) A non-intimate sample may be taken from the detained person only if it is taken by a police officer -

- (a) with the appropriate consent given in writing, or
- (b) without that consent under subparagraph (3).

(3) Fingerprints or a non-intimate sample may be taken from the detained person without the appropriate consent only if he is detained at a police station and an officer of the Island police force of at least the rank of chief inspector authorises the fingerprints or sample to be taken.

(4) An intimate sample may be taken from the detained person only if -

- (a) he is detained at a police station,
- (b) the appropriate consent is given in writing,
- (c) an officer of the Island police force of at least the rank of chief inspector authorises the sample to be taken, and

(d) subject to paragraph 13(2) and (3), the sample is taken by a police officer.

(5) An officer may give an authorisation under subparagraph (3) or (4)(c) only if -

(a) in the case of a person detained under section 42, the officer reasonably suspects that the person has been involved in an offence under any of the provisions mentioned in section 41(1)(a), and the officer reasonably believes that the fingerprints or sample will tend to confirm or disprove his involvement, or

(b) in any case, the officer is satisfied that the taking of the fingerprints or sample from the person is necessary in order to assist in determining whether he falls within section 41(1)(b).

(6) An officer may also give an authorisation under subparagraph (3) for the taking of fingerprints if -

(a) he is satisfied that the fingerprints of the detained person will facilitate the ascertainment of that person's identity, and

(b) that person has refused to identify himself or the officer has reasonable grounds for suspecting that that person is not who he claims to be.

(7) In this paragraph references to ascertaining a person's identity include references to showing that he is not a particular person.

(8) If an authorisation under subparagraph (3) or (4)(c) is given orally, the person giving it shall confirm it in writing as soon as is reasonably practicable.

11. (1) Before fingerprints or a sample are taken from a person under paragraph 10, he shall be informed -

(a) that the fingerprints or sample may be used for the purposes of paragraph 14(3), or checked against any fingerprints or samples or the information derived from samples taken and contained in the records of -

(i) a police force in England and Wales;

(ii) a police force in Scotland;

(iii) the Police Service for Northern Ireland;

(iv) the States of Jersey Police;

(v) the Isle of Man Constabulary, and

(b) where the fingerprints or sample are to be taken under paragraph 10(1)(a) or (2)(a), of the reason for taking the fingerprints or sample.

(2) Before fingerprints or a sample are taken from a person upon an authorisation given under paragraph 10(3) or (4)(c), he shall be informed-

- (a) that the authorisation has been given,
- (b) of the grounds upon which it has been given, and
- (c) where relevant, of the nature of the offence in which it is suspected that he has been involved.

(3) After fingerprints or a sample are taken under paragraph 10, there shall be recorded as soon as is reasonably practicable any of the following which apply -

- (a) the fact that the person has been informed in accordance with subparagraphs (1) and (2),
- (b) the reason referred to in subparagraph (1)(b),
- (c) the authorisation given under paragraph 10(3) or (4)(c),
- (d) the grounds upon which that authorisation has been given, and
- (e) the fact that the appropriate consent has been given.

12. (1) This paragraph applies where -

- (a) two or more non-intimate samples suitable for the same means of analysis have been taken from a person under paragraph 10,
 - (b) those samples have proved insufficient, and
 - (c) the person has been released from detention.
- (2) An intimate sample may be taken from the person if -
- (a) the appropriate consent is given in writing,
 - (b) an officer of the Island police force of at least the rank of chief inspector authorises the sample to be taken, and
 - (c) subject to paragraph 13(2) and (3), the sample is taken by a police officer.

(3) Paragraphs 10(5) and (6) and 11 shall apply in relation to the taking of an intimate sample under this paragraph; and a reference to a person detained under section 42 shall be taken as a reference to a person who was detained under section 42 when the non-intimate samples mentioned in subparagraph (1)(a) were taken.

13. (1) Where appropriate written consent to the taking of an intimate sample from a person under paragraph 10 or 12 is refused without good cause, in any proceedings against that person for an offence -

- (a) the court, in determining whether to commit him for trial or whether there is a case to answer, may draw such inferences from the refusal as appear proper, and
- (b) the court or Jurats, in determining whether that person is guilty of the offence charged, may draw such inferences from the refusal as appear proper,

(2) An intimate sample other than a sample of urine or a dental impression may be taken under paragraph 10 or 12 only by a recognised medical practitioner acting on the authority of a police officer.

(3) An intimate sample which is a dental impression may be taken under paragraph 10 or 12 only by a recognised dentist acting on the authority of a police officer.

(4) Where a sample of hair other than pubic hair is to be taken under paragraph 10 the sample may be taken either by cutting hairs or by plucking hairs with their roots so long as no more are plucked than the person taking the sample reasonably considers to be necessary for a sufficient sample.

14. (1) This paragraph applies to -

- (a) fingerprints or samples taken under paragraph 10 or 12, and
- (b) information derived from those samples.

(2) The fingerprints, samples or information may be used only for the purpose of a terrorist investigation.

(3) The fingerprints, samples or information may be checked, subject to subparagraph (2), against -

- (a) other fingerprints or samples taken under paragraph 10 or 12 or information derived from those samples,
- (b) any of the fingerprints, samples and information held by the police forces and constabularies mentioned in paragraph 11(1)(a).

15. In the application of paragraphs 10 to 14 -

- (a) "appropriate consent" means -
 - (i) in relation to a person who has attained the age of 17 years, the consent of that person;
 - (ii) in relation to a person who has not attained that age but has attained the age of 14 years, the consent of that person and his parent or guardian, and
 - (iii) in relation to a person who has not attained the age of 14 years, the consent of his parent or guardian;
- (b) "fingerprints" includes palm prints;

- (c) "insufficient" and "sufficient", in relation to a sample, means sufficient or insufficient (in point of quantity or quality) for the purpose of enabling information to be produced by the means of analysis used or to be used in relation to the sample;

- (d) "intimate sample" means -
 - (i) a sample of blood, semen or any other tissue fluid, urine or pubic hair,

 - (ii) a dental impression,

 - (iii) a swab taken from a person's body orifice other than the mouth;

- (e) "non-intimate sample" means -
 - (i) a sample of hair other than pubic hair,

 - (ii) a sample taken from a nail or from under a nail,

 - (iii) a swab taken from any part of a person's body including the mouth but not any other body orifice,

 - (iv) saliva,

- (v) a footprint or a similar impression of any part of a person's body other than a part of his hand;
- (f) "recognised medical practitioner" and "recognised dentist" shall be construed in accordance with the Doctors, Dentists and Pharmacists Ordinance, 1987^u.

PART II
REVIEW OF DETENTION UNDER SECTION 42

Requirement

- 16.** (1) A person's detention shall be periodically reviewed by a review officer.
- (2) The first review shall be carried out as soon as is reasonably practicable after the time of the person's arrest.
- (3) Subsequent reviews shall, subject to paragraph 17, be carried out at intervals of not more than 12 hours.
- (4) No review of a person's detention shall be carried out after a warrant extending his detention has been issued under Part III.

Postponement

^u Recueil d'Ordonnances Tome XXIV, p. 79.

17. (1) A review may be postponed if at the latest time at which it may be carried out in accordance with paragraph 16 -

- (a) the detained person is being questioned by a police officer and an officer is satisfied that an interruption of the questioning to carry out the review would prejudice the investigation in connection with which the person is being detained,
- (b) no review officer is readily available, or
- (c) it is not practicable for any other reason to carry out the review.

(2) Where a review is postponed it shall be carried out as soon as is reasonably practicable.

(3) For the purposes of ascertaining the time within which the next review is to be carried out, a postponed review shall be deemed to have been carried out at the latest time at which it could have been carried out in accordance with paragraph 16.

Grounds for continued detention

18. (1) A review officer may authorise a person's continued detention only if satisfied that it is necessary -

- (a) to obtain relevant evidence whether by questioning him or otherwise,
- (b) to preserve relevant evidence,
- (c) pending a decision whether to apply to the Lieutenant-Governor for a deportation order to be made against the detained person,
- (d) pending the making of an application to the Lieutenant-Governor for a deportation order to be made against the detained person,
- (e) pending consideration by the Lieutenant-Governor whether to make a deportation order against the detained person, or
- (f) pending a decision whether the detained person should be charged with an offence.

(2) The review officer shall not authorise continued detention by virtue of subparagraph (1)(a) or (b) unless he is satisfied that the investigation in connection with which the person is detained is being conducted diligently and expeditiously.

(3) The review officer shall not authorise continued detention by virtue of subparagraph (1)(c) to (f) unless he is satisfied that the process pending the completion of which detention is necessary is being conducted diligently and expeditiously.

(4) In subparagraph (1)(a) and (b) "relevant evidence" means evidence which -

(a) relates to the commission by the detained person of an offence under any of the provisions mentioned in section 41(1)(a), or

(b) indicates that the detained person falls within section 41(1)(b).

(5) In subparagraph (1) "deportation order" means a deportation order under the Immigration Act 1971.

Review officer

19. (1) The review officer shall be an officer who has not been directly involved in the investigation in connection with which the person is detained.

(2) In the case of a review carried out within the period of 24 hours beginning with the time of arrest, the review officer shall be an officer of the Island police force of at least the rank of Inspector.

(3) In the case of any other review, the review officer shall be an officer of the Island police force of at least the rank of Chief Inspector.

20. (1) This paragraph applies when -

(a) the review officer is of a rank lower than Chief Inspector,

- (b) an officer of higher rank than the review officer gives directions relating to the detained person, and
- (c) those directions are at variance with the performance by the review officer of a duty imposed on him under this Schedule.

(2) The review officer shall refer the matter at once to an officer of the Island police force of at least the rank of Superintendent.

Representations

21. (1) Before determining whether to authorise a person's continued detention, a review officer shall give either of the following persons an opportunity to make representations about the detention -

- (a) the detained person, or
- (b) an Advocate representing him who is available at the time of the review.

(2) Representations may be oral or written.

(3) A review officer may refuse to hear oral representations from the detained person if he considers that he is unfit to make representations because of his condition or behaviour.

Rights

22. (1) Where a review officer authorises continued detention he shall inform the detained person -

- (a) of any of his rights under paragraphs 5 and 6 which he has not yet exercised, and
- (b) if the exercise of any of his rights under either of those paragraphs is being delayed in accordance with the provisions of paragraph 7, of the fact that it is being so delayed.

(2) Where a review of a person's detention is being carried out at a time when his exercise of a right under either of those paragraphs is being delayed -

- (a) the review officer shall consider whether the reason or reasons for which the delay was authorised continue to subsist, and
- (b) if in his opinion the reason or reasons have ceased to subsist, he shall inform the officer who authorised the delay of his opinion (unless he was that officer).

Record

23. (1) A review officer carrying out a review shall make a written record of the outcome of the review and of any of the following which apply -

- (a) the grounds upon which continued detention is authorised,

- (b) the reasons for postponement of the review,
- (c) the fact that the detained person has been informed as required under paragraph 22(1),
- (d) the officer's conclusions on the matter considered under paragraph 22(2)(a),
- (e) the fact that he has taken action under paragraph 22(2)(b), and
- (f) the fact that the detained person is being detained by virtue of section 42(5) or (6).

(2) The review officer shall -

- (a) make the record in the presence of the detained person, and
- (b) inform him at that time whether the review officer is authorising continued detention and, if he is, of his grounds.

(3) Subparagraph (2) shall not apply where, at the time when the record is made, the detained person is -

- (a) incapable of understanding what is said to him,
- (b) violent or likely to become violent, or

- (c) in urgent need of medical attention.

PART III

EXTENSION OF DETENTION UNDER SECTION 42

Warrant of further detention

24. (1) An officer of the Island police force of at least the rank of Chief Inspector may apply to the Bailiff for the issue of a warrant of further detention under this Part.

(2) A warrant of further detention -

- (a) shall authorise the further detention under section 42 of a specified person for a specified period, and
- (b) shall state the time at which it is issued.

(3) The specified period in relation to a person shall end not later than the end of the period of seven days beginning -

- (a) with the time of his arrest under section 42, or
- (b) if he was being detained under Schedule 8 when he was arrested under section 42, with the time when his examination under that Schedule began.

Time limit

25. (1) An application for a warrant shall be made -

(a) during the period mentioned in section 42(3), or

(b) within six hours of the end of that period.

(2) The Bailiff hearing an application made by virtue of subparagraph (1)(b) shall dismiss the application if he considers that it would have been reasonably practicable to make it during the period mentioned in section 42(3).

(3) For the purposes of this Schedule, an application for a warrant is made when written or oral notice of an intention to make the application is given to Her Majesty's Greffier.

Notice

26. An application for a warrant may not be heard unless the person to whom it relates has been given a notice stating -

(a) that the application has been made,

(b) the time at which the application was made,

(c) the time at which it is to be heard, and

(d) the grounds upon which further detention is sought.

Grounds for extension

27. (1) The Bailiff may issue a warrant of further detention only if satisfied that -

- (a) there are reasonable grounds for believing that the further detention of the person to whom the application relates is necessary to obtain relevant evidence whether by questioning him or otherwise or to preserve relevant evidence, and
- (b) the investigation in connection with which the person is detained is being conducted diligently and expeditiously.

(2) In subparagraph (1) "relevant evidence" means, in relation to the person to whom the application relates, evidence which -

- (a) relates to his commission of an offence under any of the provisions mentioned in section 41(1)(a), or
- (b) indicates that he is a person falling within section 41(1)(b).

Representation

28. (1) The person to whom an application relates shall -

- (a) be given an opportunity to make oral or written representations to the Bailiff about the application, and

- (b) subject to subparagraph (3), be entitled to be legally represented at the hearing.

(2) The Bailiff shall adjourn the hearing of an application to enable the person to whom the application relates to obtain legal representation where -

- (a) he is not legally represented,
- (b) he is entitled to be legally represented, and
- (c) he wishes to be so represented.

(3) The Bailiff may exclude any of the following persons from any part of the hearing -

- (a) the person to whom the application relates,
- (b) anyone representing him.

Information

29. (1) The officer who has made an application for a warrant may apply to the Bailiff for an order that specified information upon which he intends to rely be withheld from -

- (a) the person to whom the application relates, and
- (b) anyone representing him.

(2) Subject to subparagraph (3), the Bailiff may make an order under subparagraph (1) in relation to specified information only if satisfied that there are reasonable grounds for believing that if the information were disclosed -

- (a) evidence of an offence under any of the provisions mentioned in section 41(1)(a) would be interfered with or harmed,
- (b) the recovery of property obtained as a result of an offence under any of those provisions would be hindered,
- (c) the recovery of property in respect of which a forfeiture order could be made under section 18 would be hindered,
- (d) the apprehension, prosecution or conviction of a person who is suspected of falling within section 41(1)(a) or (b) would be made more difficult as a result of his being alerted,
- (e) the prevention of an act of terrorism would be made more difficult as a result of a person being alerted,
- (f) the gathering of information about the commission, preparation or instigation of an act of terrorism would be interfered with, or
- (g) a person would be interfered with or physically injured.

(3) The Bailiff may also make an order under subparagraph (1) in relation to specified information if satisfied that there are reasonable grounds for believing that -

- (a) the detained person has committed an offence under the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999,
- (b) the detained person has benefited from the offence within the meaning of that Law, and
- (c) the recovery of the value of that benefit would be hindered if the information were disclosed.

(4) The Bailiff shall direct that the following be excluded from the hearing of the application under this paragraph -

- (a) the person to whom the application for a warrant relates, and
- (b) anyone representing him.

Adjournments

30. (1) The Bailiff may adjourn the hearing of an application for a warrant only if the hearing is adjourned to a date before the expiry of the period mentioned in section 42(3).

(2) This paragraph shall not apply to an adjournment under paragraph 28(2).

Extensions of warrants

31. (1) A police officer of at least the rank of chief inspector may apply to the Bailiff for the extension or further extension of the period specified in a warrant of further detention.

(2) Where the period specified is extended, the warrant shall be endorsed with a note stating the new specified period.

(3) The specified period shall end not later than the end of the period of seven days beginning -

- (a) with the time of the person's arrest under section 42, or
- (b) if he was being detained under Schedule 8 when he was arrested under section 42, with the time when his examination under that Schedule began.

(4) Paragraphs 25(3) and 26 to 29 shall apply to an application under this paragraph as they apply to an application for a warrant of further detention.

(5) The Bailiff may adjourn the hearing of an application under subparagraph (1) only if the hearing is adjourned to a date before the expiry of the period specified in the warrant.

(6) Subparagraph (5) shall not apply to an adjournment under paragraph 28(2).

Detention - conditions

32. A person detained by virtue of a warrant issued under this Part shall (unless detained in accordance with section 42(5) or (6) or under any other power) be released immediately if the officer having custody of him becomes aware that any of the grounds under paragraph 27(1)(a) and (b) upon which the Bailiff authorised his further detention have ceased to apply.