

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

**THE TERRORISM AND CRIME (BAILIWICK OF GUERNSEY) LAW, 2002 (AMENDMENT)
ORDINANCE, 2021**

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 (Amendment) Ordinance, 2021", and to direct that the same shall have effect as an Ordinance of the States.

This proposition has been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

EXPLANATORY MEMORANDUM

This Ordinance amends the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 ("the 2002 Law"). The amendments are closely based on provision made in United Kingdom legislation, in Schedule 3 to the Counter-Terrorism and Border Security Act 2019, and Schedule 1 to the Counter-Terrorism and Security Act 2015. The Ordinance has been prepared in consultation with Guernsey police.

The Ordinance principally amends Schedule 8 (Port and Border Controls) to the 2002 Law. It also amends the index of defined expressions at section 80, and Schedule 9 (Detention).

Section 1 amends the index of defined expressions, which amendments are consequential on amendments made to Schedules 8 and 9 at sections 2 to 5. Sections 2 to 4 contain amendments of Schedule 8, grouped as follows: provisions in relation to the seizure and retention of travel documents at section 2, provisions in relation to "hostile activity" at section 3, and other amendments at section 4. Section 5 contains amendments to Schedule 9. Sections 6, 7 and 8 are the extent, citation and commencement clauses.

Section 2(2) inserts new definitions into Schedule 8 to the 2002 Law. Section 2(3) inserts new paragraphs 8A and 8B into that Schedule, which are concerned with the inspection, seizure, and retention of travel documents, and an associated power of search. Paragraph 8A confers powers and duties, and paragraph 8B creates associated offences. These powers are related to terrorism-related activity.

Section 3 amends several paragraphs of Schedule 8 and inserts new paragraphs 9A to 9E. Paragraphs 9A to 9E are concerned with powers to detain, and destroy or use,

articles detained under paragraph 9. It confers powers and duties on and in respect of the Regulation of Investigatory Powers Law ("RIPL") Commissioner (for example, to be informed of certain matters and to authorise certain actions), including powers in relation to confidential material (defined as items subject to legal professional privilege and special material for the purposes of the Police Powers and Criminal Evidence Law – for example, journalistic material or medical records). The authorising role of the RIPL Commissioner in this regard mirrors that of the Investigatory Powers Commissioner in the United Kingdom.

Section 4 makes other amendments to Schedule 8. They include widening the definition of "examining officer" to include a customs officer; making further provision in relation to detention time-limits and limits on the use of information given in response to questioning in criminal proceedings; and restrictions on search powers. The amendments also confer a duty on the Committee for Home Affairs to issue Codes of Practice.

The amendments to Schedule 9 at section 5 include providing for an increase in the period of detention that may be applied for on application to the Bailiff for a warrant for further detention from 7 to 14 days. As elsewhere, these amendments are based on the position in the relevant United Kingdom legislation.

The Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 (Amendment) Ordinance, 2021

THE STATES, in pursuance of their Resolutions of the 4th day of November, 2020^a, and in exercise of the powers conferred on them by sections 81A and 82 of the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002, as amended^b, and all other powers enabling them in that behalf, hereby order:-

Amendment of index of defined expressions.

1. (1) In section 80 of the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 ("**the 2002 Law**"), insert at the appropriate places -

""the Commissioner"	Schedule 8 paragraph 1(3)",
""Confidential material"	Schedule 8 paragraph 9E(8)",
""Intimate search"	Schedule 8 paragraph 6(4)",
""Involvement in terrorism-related activity"	Schedule 8 paragraph 1(3)",
""Passport"	Schedule 8 paragraph 1(3)",

^a Article I of Billet d'État No. XXIII of 2020.

^b Order in Council No. I of 2000; as amended by No. XVI of 2002; No. VII of 2005; No. XIII of 2006; No. XIII of 2010; No. XI of 2011 and No. XIV of 2012; Ordinance No. XXXIII of 2003; No. XLVI of 2007; Nos. XIII, XX and XXXVI of 2010; Nos. XXIX and LIV of 2014; No. IX of 2016; and Nos. XXVI and XLV of 2018; G.S.I. No. 16 of 2003; G.S.I. No. 41 of 2005; and G.S.I. No. 5 of 2017.

""Senior officer	Schedule 8 paragraphs 9B(7) and 9E(7)",
""Strip search	Schedule 8 paragraph 6(4)", and
""Travel document	Schedule 8 paragraph 1(3)".

Seizure and retention of travel documents.

2. (1) Schedule 8 to the 2002 Law is amended as follows.

(2) After paragraph 1(2) insert -

"(3) In this Schedule -

"the Commissioner" means the Commissioner appointed under the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003,

"involvement in terrorism-related activity" means any one or more of the following -

- (a) the commission, preparation or instigation of acts of terrorism,
- (b) conduct that facilitates the commission, preparation or instigation of such acts, or is intended to do so,

- (c) conduct that gives encouragement to the commission, preparation or instigation of such acts, or is intended to do so,
- (d) conduct that gives support or assistance to individuals who are known or believed by the person concerned to be involved in conduct falling within paragraph (a),

and it is immaterial whether the acts of terrorism in question are specific acts of terrorism or acts of terrorism in general,

"passport" means -

- (a) a United Kingdom passport (within the meaning of the Immigration Act 1971),
- (b) a passport issued by or on behalf of the authorities of a country or territory outside the United Kingdom, or by or on behalf of an international organisation, or
- (c) a document that can be used (in some or all circumstances) instead of a passport, and

"travel document" means anything that is or appears to be –

- (a) a passport, or

- (b) a ticket or other document that permits a person to make a journey by any means from a place within the Bailiwick to a place outside the Bailiwick."

- (3) After paragraph 8, insert -

"Seizure and retention of passports and other travel documents.

8A. (1) If an examining officer has reasonable grounds to suspect that a person who is at a port in the Bailiwick is there with the intention of leaving the Bailiwick for the purpose of involvement in terrorism-related activity elsewhere, or has arrived in the Bailiwick with the intention of leaving soon for that purpose, the officer may stop that person or any vehicle in which the person is, using reasonable force if necessary, and may -

- (a) require the person to hand over all travel documents in his or her possession to the officer,
- (b) search the person, anything that the person has with him or her, and any vehicle in which the person has travelled or is about to travel, for travel documents relating to the person, and take possession of any that the officer finds,
- (c) inspect any travel document relating to the person, and

(d) retain any travel document relating to the person that is lawfully in the possession of the officer.

(2) An examining officer exercising a power conferred by subparagraph (1)(a) or (b) must tell the person concerned that he or she is suspected of intending to leave the Bailiwick for the purpose of involvement in terrorism-related activity elsewhere and that the officer is therefore entitled to exercise that power.

(3) If a travel document relating to a person described in subparagraph (1) lawfully comes into the possession of an examining officer without any exercise of a power under that subparagraph, the officer may retain it.

(4) An examining officer who has retained a travel document pursuant to subparagraph (1)(d) or (3) must as soon as possible seek authorisation for its further retention from one of the persons listed in subparagraph (5), who may grant such authorisation if satisfied that there are reasonable grounds for the suspicion referred to in subparagraph (1).

(5) The persons referred to in subparagraph (4) are –

(a) a police officer of at least the rank of chief inspector,

(b) the chief immigration officer, and

(c) a customs officer of at least the grade of surveyor.

(6) A travel document authorised to be retained under subparagraph (4) may be so retained while consideration is given to cancelling the person's passport, charging the person with an offence, or making the person subject to any order or measure connected with protecting members of the public from a risk of terrorism, or while steps are taken to carry out any of those actions, but, subject to subparagraphs (7), (8) and (10), not for more than 14 days.

(7) An examining officer may retain a travel document for more than 14 days if the officer believes on reasonable grounds that it may be needed as evidence in criminal proceedings or in connection with a decision by the Lieutenant Governor whether to make a deportation order under the Immigration Act 1971.

(8) The Magistrate's Court may, on the application of a police officer of at least the rank of chief inspector or the chief immigration officer or a customs officer of at least the grade of surveyor, order the extension of the period of 14 days mentioned in subparagraph (6) to a period not exceeding 30 days in total, but only if the court is satisfied that -

(a) the matters referred to in that subparagraph have been, and are being, pursued diligently and expeditiously, and

(b) reasonable efforts have been made to notify the person to whom the application relates of the

time and place at which it is to be heard, and that that person may (subject to subparagraph (9)) make oral or written representations to the court, and be represented by an Advocate.

(9) An officer applying under subparagraph (8) may also apply to the court, ex parte and in camera, for an order -

- (a) excluding from any part of the hearing the person to whom the application relates, or anyone representing that person, or both,
- (b) that specified information on which the officer intends to rely be withheld from the person to whom the application relates, or anyone representing that person, or both,

and the court may make such an order only if satisfied that without it there are reasonable grounds for believing that -

- (i) evidence of an offence under this Law would be interfered with or harmed,
- (ii) the recovery of property obtained as a result of an offence under this Law would be hindered,
- (iii) the recovery of property in respect of which a forfeiture order could be made

under this Law would be hindered,

- (iv) the apprehension, prosecution or conviction of a person who is suspected of being a terrorist would be made more difficult as a result of the person being alerted,
- (v) the prevention of an act of terrorism would be made more difficult as a result of a person being alerted,
- (vi) the gathering of information about the commission, preparation or instigation of an act of terrorism would be interfered with,
- (vii) a person would be interfered with or physically injured, or
- (viii) national security would be put at risk.

(10) Where a power under this paragraph to retain a document is exercised and such powers have been exercised in the same person's case on two or more occasions in the previous six months –

- (a) the Magistrate's Court may only grant an application made under subparagraph (8), if satisfied that there are exceptional circumstances

justifying the further use of powers under this paragraph in relation to the same person, and

- (b) on granting such an application, the Magistrate's Court may only order the extension of the period of 14 days mentioned in subparagraph (6) to a period not exceeding 20 days in total.

(11) If a person is unable to leave the Bailiwick because any of his or her travel documents are retained under this paragraph -

- (a) the Committee for Home Affairs may make whatever arrangements it thinks appropriate in relation to that person, and
- (b) if the person does not have leave to enter or remain in the Bailiwick, the person's presence in the Bailiwick is nevertheless not unlawful for the purposes of the Immigration Act 1971.

8B. (1) A person who is required under paragraph 8A(1)(a) to hand over all travel documents in the person's possession commits an offence if he or she fails without reasonable excuse to do so.

(2) A person who intentionally obstructs, or seeks to frustrate, a search under paragraph 8A(1)(b) commits an offence.

(3) A person guilty of an offence under this paragraph is liable 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."

Hostile activity.

3. (1) Schedule 8 to the 2002 Law is amended as follows.

(2) In paragraph 2(1), for "a person falling within section 41(1)(b)" substitute -

"(a) a person falling within section 41(1)(b), or

(b) a person who is, or has been, engaged in hostile activity".

(3) At the end of the words in paragraph 2(4), insert "or that a person is or has been engaged in hostile activity".

(4) After paragraph 2(4), insert -

"(5) A person is or has been engaged in hostile activity for the purposes of this Schedule if the person is or has been concerned in the commission, preparation or instigation of a hostile act that is or may be –

(a) carried out for, or on behalf of, a State other than the United Kingdom, or

(b) otherwise in the interests of a State other than the United Kingdom.

- (6) An act is a hostile act if it -
- (a) threatens national security,
 - (b) threatens the economic well-being of any part of the British Islands in a way relevant to the interests of national security, or
 - (c) is an act of serious crime.
- (7) For the purposes of this paragraph -
- (a) it is immaterial -
 - (i) whether a person is aware that activity in which he or she is or has been engaged is hostile activity, or
 - (ii) whether a State for or on behalf of which, or in the interests of which, a hostile act is carried out has instigated, sanctioned, or is otherwise aware of, the carrying out of the act,
 - (b) "State" includes the government of a State and any organ of its government,

- (c) references to a State other than the United Kingdom include references to any territory outside the British Islands,
- (d) the reference to serious crime is to crime where—
 - (i) the offence, or one of the offences, which is or would be constituted by the conduct concerned is an offence for which a person who has reached the age of 18 and has no previous convictions could reasonably be expected to be sentenced to imprisonment for a term of 3 years or more, or
 - (ii) the conduct involves the use of violence, results in substantial financial gain or is conduct by a large number of persons in pursuit of a common purpose."

(5) In paragraph 6(1), immediately after "section 41(1)(b)" insert "or has been engaged in hostile activity", in subparagraph (d) for "." substitute ",", and after subparagraph (d) insert -

- "(e) search a vehicle which is on a ship or aircraft,

(f) search a vehicle which the officer reasonably believes has been, or is about to be, on a ship or aircraft."

(6) At the end of paragraph 7(1) insert "or in connection with a person's engagement in hostile activity".

(7) In paragraph 7(2)(a) immediately after "ship" insert "or vehicle".

(8) At the end of paragraph 9(2)(b) delete "or", at the end of paragraph 9(2)(c) for "." substitute ",", and after subparagraph (c) insert -

"(d) while the officer believes that it could be used in connection with the carrying out of a hostile act, or

(e) while the officer believes it necessary to do so for the purpose of preventing death or significant injury."

(9) After paragraph 9 insert -

"9A. (1) This paragraph applies in relation to an article detained by virtue of paragraph 9(2)(d) or (e), other than an article in respect of which an authorisation is granted under paragraph 9B.

(2) The Commissioner must be informed of the article's detention as soon as is reasonably practicable.

(3) Subparagraph (4) applies where it appears to the Commissioner that there are reasonable grounds to believe -

(a) that the article has been or could be used in connection with the carrying out of a hostile act, or

(b) that returning the article to the person from whom it was taken could result in a risk of death or significant injury to any person.

(4) The Commissioner may -

(a) direct that the article is destroyed, or

(b) authorise the detention and use of the article (subject to subparagraph (5)).

(5) The Commissioner may authorise the detention and use of an article under subparagraph (4)(b) that consists of or includes confidential material only if satisfied that -

(a) arrangements are in place that are sufficient for ensuring that the material is detained securely, and

(b) the material will be used only so far as necessary and proportionate for a relevant purpose.

(6) If the Commissioner does not proceed under subparagraph (4) in relation to an article, the Commissioner must (subject to subparagraph (7)) direct that the article is returned to the person from whom it was taken.

(7) Subparagraph (6) does not apply if the article is further detained under a power conferred by paragraph 9(2)(b) or (c).

(8) In authorising the detention and use of an article under this paragraph the Commissioner may impose whatever conditions the Commissioner thinks appropriate in relation to its retention and use.

(9) For the purposes of subparagraph (5)(b), the use of material is necessary for a relevant purpose if it is necessary –

- (a) in the interests of national security,
- (b) in the interests of the economic well-being of any part of the British Islands so far as those interests are also relevant to the interests of national security,
- (c) for the purpose of preventing or detecting serious crime, or
- (d) for the purpose of preventing death or significant injury.

- 9B.** (1) This paragraph applies where -
- (a) an article is detained by virtue of paragraph 9(2)(d) or (e), and
 - (b) the examining officer who detained the article considers that the urgency condition is met in relation to the article.
- (2) The urgency condition is met in relation to an article if –
- (a) there is an urgent need for the article to be examined or otherwise used for the purpose of preventing –
 - (i) the carrying out of a hostile act, or
 - (ii) death or significant injury, or for the purpose of mitigating the risk of any such act, death or injury occurring, and
 - (b) the time it would take for the requirements of paragraph 9A to be complied with in relation to the article would not enable such use to take place with sufficient urgency.

(3) Where this paragraph applies, the examining officer may apply to a senior officer for authorisation to continue to detain and use the article.

(4) An application under subparagraph (3) in relation to an article may be made only to a senior officer who has not been directly involved in the exercise of any power under this Schedule to take the article or to question a person from whom the article was taken.

(5) A senior officer may grant an authorisation under this paragraph for the detention and use of the article if satisfied -

(a) that there are reasonable grounds for considering that the urgency condition is met in relation to the article, and

(b) in the case of an article that consists of or includes confidential material, that -

(i) arrangements are in place that are sufficient for ensuring that the material is detained securely, and

(ii) the material will be used only so far as necessary and proportionate for a purpose mentioned in subparagraph (2)(a).

(6) An authorisation under this paragraph -

- (a) must be recorded in writing,
 - (b) may be granted subject to whatever conditions the senior officer thinks appropriate.
- (7) In this paragraph, "**senior officer**" means -
- (a) where the examining officer is a police officer, another officer of at least the rank of chief inspector, and
 - (b) where the examining officer is an immigration officer or a customs officer, an immigration officer or customs officer as the case requires of a higher grade than the examining officer.

Power to make and retain copies.

9C. (1) This paragraph applies where the examining officer is a police officer.

- (2) The officer may copy anything which -
- (a) is given to the officer in accordance with paragraph 3,
 - (b) is searched or found on a search under paragraph 6, or

(c) is examined under paragraph 7.

(3) A copy made under subparagraph (2) may be retained -

(a) for so long as it is necessary for the purpose of determining whether a person is or has been engaged in hostile activity,

(b) while the examining officer believes that it may be needed for use as evidence in criminal proceedings,

(c) while the examining officer 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,

(d) while the examining officer believes it necessary to retain the copy -

(i) in the interests of national security,

(ii) in the interests of the economic well-being of any part of the British Islands so far as those interests are also relevant to the interests of national security, or

(iii) for the purpose of preventing or detecting an act of serious crime, or

(e) while the examining officer believes it necessary to retain the copy to prevent death or significant injury.

9D. (1) This paragraph applies in relation to a copy consisting of or including confidential material that is retained by virtue of paragraph 9C(3)(d) or (e), other than a copy in respect of which an authorisation is granted under paragraph 9E.

(2) The Commissioner must be informed of the copy's retention as soon as is reasonably practicable.

(3) The Commissioner may authorise the retention and use of the copy if both of the following two conditions are met.

(4) The first condition is that it appears to the Commissioner that there are reasonable grounds to believe that it is necessary to retain the copy -

(a) in the interests of national security,

(b) in the interests of the economic well-being of any part of the British Islands so far as those interests are also relevant to the interests of national security,

(c) for the purpose of preventing or detecting an act of serious crime, or

(d) for the purpose of preventing death or significant injury.

(5) The second condition is that the Commissioner is satisfied that -

(a) arrangements are in place that are sufficient for ensuring that any confidential material contained in the copy is retained securely, and

(b) the material will be used only so far as necessary and proportionate for a relevant purpose.

(6) If the Commissioner does not proceed under subparagraph (3) in relation to a copy, the Commissioner must direct that the copy is destroyed.

(7) In authorising the retention and use of a copy under subparagraph (3) the Commissioner may impose whatever conditions the Commissioner thinks appropriate in relation to its retention and use.

(8) For the purposes of subparagraph (5)(b), the use of material is necessary for a relevant purpose if it is necessary -

(a) in the interests of national security,

- (b) in the interests of the economic well-being of any part of the British Islands so far as those interests are also relevant to the interests of national security,
- (c) for the purpose of preventing or detecting serious crime, or
- (d) for the purpose of preventing death or significant injury.

9E. (1) This paragraph applies where -

- (a) a copy consisting of or including confidential material is retained by virtue of paragraph 9C(3)(d) or (e), and
- (b) the examining officer who retained the copy considers that the urgency condition is met in relation to the copy.

(2) The urgency condition is met in relation to a copy if -

- (a) there is an urgent need for the copy to be examined or otherwise used for the purpose of preventing -
 - (i) the carrying out of a hostile act, or

(ii) death or significant injury, or for the purpose of mitigating the risk of any such act, death or injury occurring, and

(b) the time it would take for the requirements of paragraph 9B to be complied with in relation to the copy would not enable such use to take place with sufficient urgency.

(3) The examining officer may apply to a senior officer for authorisation to continue to retain and use the copy.

(4) An application under subparagraph (3) in relation to a copy may be made only to a senior officer who has not been directly involved in the exercise of any power under this Schedule to make the copy or to question a person from whom the article was taken from which the copy was made.

(5) A senior officer may grant an authorisation under this paragraph for the retention and use of a copy if satisfied that -

(a) there are reasonable grounds for considering that the urgency condition is met in relation to the copy,

(b) arrangements are in place that are sufficient for ensuring that confidential material contained in the copy is retained securely, and

(c) the material will be used only so far as necessary and proportionate for a purpose mentioned in subparagraph (2)(a).

(6) An authorisation under this paragraph -

(a) must be recorded in writing,

(b) may be granted subject to whatever conditions the senior officer thinks appropriate.

(7) In this paragraph "**senior officer**" means -

(a) a police officer of at least the rank of chief inspector,

(b) the chief immigration officer, or

(c) a customs officer of at least the grade of surveyor.

(8) For the purposes of this paragraph and paragraphs 9A, 9B and 9D, documents, articles and items are "**confidential material**" if they are -

- (a) items subject to legal professional privilege, as defined in section 24 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003, or
 - (b) special material, as defined in section 25 of that Law."
- (10) In Schedule 9 to the 2002 Law -
- (a) in paragraph 7(4)(e), immediately after "terrorism" insert "or acts carried out in connection with a person's engagement in hostile activity", and
 - (b) at the end of paragraph 14(2) insert "or an investigation into whether a person has engaged in hostile activity".

General amendments to Schedule 8.

4. (1) Schedule 8 to the 2002 Law is amended as follows.
- (2) In paragraph 1(1)(a) omit "or", in paragraph 1(1)(b) for "." substitute ", or", and immediately after insert -
- "(c) a customs officer."
- (3) For subparagraphs 4(3) and 4(4) substitute -

"(3) Where a person is detained under this paragraph the provisions of Part I of Schedule 9 (treatment) and Part II of Schedule 9 (review of detention under section 42) shall apply.

(4) A person may not be questioned under paragraph 2 for more than one hour unless the person is detained under this paragraph, and a person so detained must be released not later than the end of six hours after first being questioned (unless detained under another power).

(5) If a person detained under this paragraph is removed to hospital because the person needs medical treatment -

(a) any time during which the person is being questioned under paragraph 2 in hospital or on the way there or back is to be included in calculating the six hours mentioned in subparagraph (4), but

(b) any other time when the person is in hospital or on the way there or back is not to be included."

(4) After paragraph 4 insert -

"4A. (1) An answer or information given orally by a person in response to a question asked under paragraph 2 may not be used in evidence in criminal proceedings.

(2) Subparagraph (1) does not apply -

- (a) in the case of proceedings under paragraph 15 of this Schedule,
- (b) on a prosecution for perjury, or
- (c) on a prosecution for some other offence where, in giving evidence, the person makes a statement inconsistent with the answer or information mentioned in subparagraph (1).

(3) A statement may not be used by virtue of subparagraph (2)(c) unless -

- (a) evidence relating to it is adduced, or
- (b) a question relating to it is asked, by or on behalf of the person in the proceedings arising out of the prosecution."

(5) For paragraph 6(2), substitute -

"(2) A search of a person under this paragraph -

- (a) must be carried out by somebody of the same sex,
- (b) does not extend to the carrying out of an intimate search.

(3) A strip search of a person may not be carried out under this paragraph unless –

- (a) the person is detained under paragraph 4,
- (b) the examining officer has reasonable grounds to suspect that the person is concealing something which may be evidence that the person is or has been engaged in acts of terrorism or hostile activity, and
- (c) the search is authorised by an officer of higher rank or grade than the examining officer and who has not been directly involved in the questioning of the person.

(4) In this paragraph –

"**intimate search**" means a search which consists of a physical examination of a person's body orifices other than the mouth,

"**strip search**" means a search which is not an intimate search but involves the removal of an article of clothing which –

- (a) is being worn wholly or partly on the trunk, and
- (b) is being so worn either next to the skin or next to an article of underwear."

(6) In paragraph 15(2), for "three months" substitute "12 months".

(7) After paragraph 15, insert -

"Information.

16. Information acquired by an examining officer may be supplied -

- (a) to the Committee for Home Affairs or the Lieutenant Governor for use in relation to immigration,
- (b) to another examining officer,
- (c) to a person exercising public functions specified in regulations made by the Committee for Home Affairs for use of a kind specified in the regulations.

Other police, customs and immigration officer powers.

17. (1) A power conferred by virtue of this Schedule on an examining officer -

- (a) is additional to powers exercisable by a police officer or an immigration officer or a customs officer under the customary law or by virtue of any other enactment, and

(b) is not to be taken to affect those powers.

General Schedule 8 Codes of Practice.

18. (1) The Committee shall issue codes of practice about -

- (a) training to be undertaken by and accreditation to be given to police, customs and immigration officers who are to act as examining officers or exercise other functions under this Schedule,
- (b) reviews under Part II of Schedule 9, as applied by paragraph 4(3) of this Schedule, including the training to be undertaken by persons who are to act as review officers,
- (c) the exercise by examining officers, and others of other functions conferred on them by this Schedule.

(2) An examining officer must perform the functions conferred by virtue of this Schedule in accordance with any relevant code of practice in operation under subparagraph (1)(b).

(3) The failure of an examining officer to observe a provision of a code of practice does not of itself make the officer liable to criminal or civil proceedings.

(4) A code of practice -

(a) is admissible in evidence in criminal and civil proceedings, and

(b) is to be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant.

(5) The Committee may revise a code of practice and issue the revised code."

General amendments to Schedule 9.

5. (1) Schedule 9 to the 2002 Law is amended as follows.

(2) In paragraph 1(5), immediately after "arrested" insert "under this Law or detained under Schedule 8".

(3) After paragraph 6(2) insert -

"(3) A detained person must be informed of the right under subparagraph (1) on first being detained."

(4) In paragraph 9 -

(a) for subparagraphs (1) and (2) substitute -

"(1) This paragraph applies where a detained person exercises the right under paragraph 6 to consult an Advocate.

(2) A police officer of at least the rank of chief inspector or the chief immigration officer or a customs officer of at least the grade of surveyor may direct that the right –

(a) may not be exercised (or further exercised) by consulting the Advocate who attends for the purpose of the consultation or who would so attend but for the giving of the direction, but

(b) may instead be exercised by consulting a different Advocate of the detained person's choosing.

(2A) A direction under this paragraph may be given before or after a detained person's consultation with an Advocate has started (and if given after it has started the right to further consult that Advocate ceases on the giving of the direction)", and

(b) omit subparagraphs (4) and (5).

(5) At the end of the heading to Part II add "OR SCHEDULE 8".

(6) In paragraph 24(1) for "an officer of the Island police force of at least the rank of Chief Inspector" and in paragraph 31(1) for "a police officer of at least the rank of chief inspector" substitute "a police officer of at least the rank of chief inspector or the chief immigration officer or a customs officer of at least the grade of surveyor".

(7) In paragraph 31(3) for "seven" substitute "14".

(8) After paragraph 32 insert -

"General Schedule 9 Codes of Practice.

33. (1) In addition to the code of practice about recording of interviews under paragraph 3, the Committee may issue codes of practice -

- (a) making supplementary provision, not inconsistent with this Law, concerning the photographing, measuring or otherwise identifying of detained persons, the entitlements and requirements concerning informing another person of detention and access to an Advocate, and the taking of fingerprints, non-intimate samples and intimate samples,
- (b) making provision concerning the periods during which photographs, measurements, fingerprints, non-intimate samples, intimate samples and other identification material are to be retained, arrangements for their security, and the circumstances in which any such material must be destroyed,
- (c) imposing requirements as to the times at which, persons by whom, and manner in which the

retention of any such material must be reviewed, and

- (d) otherwise governing the exercise by examining officers, authorised persons and others of any other functions conferred on them by this Schedule.

(2) An examining officer must perform the functions conferred by virtue of this Schedule in accordance with any relevant code of practice in operation under subparagraph (1).

(3) The failure of an examining officer to observe a provision of a code does not of itself make the officer liable to criminal or civil proceedings.

(4) A code of practice -

- (a) is admissible in evidence in criminal and civil proceedings, and
- (b) is to be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant.

(7) The Committee may revise a code of practice and issue the revised code."

Extent.

6. This Ordinance has effect throughout the Bailiwick.

Citation.

7. This Ordinance may be cited as the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 (Amendment) Ordinance, 2021.

Commencement.

8. This Ordinance shall come into force on the 3rd May, 2021.