STATES OF JERSEY

REPORT OF THE INVESTIGATORY POWERS COMMISSIONER FOR REGULATION OF INVESTIGATORY POWERS (JERSEY) LAW 2005 AND POLICE PROCEDURES AND CRIMINAL EVIDENCE (JERSEY) LAW 2003: 1ST JANUARY TO 31ST DECEMBER 2011

Presented to the States on 12th June 2012

STATES GREFFE

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FOREWORD

In accordance with the requirement in Article 44(6) of the Regulation of Investigatory Powers (Jersey) Law 2005 and Article 104(4) of the Police Procedures and Criminal Evidence (Jersey) Law 2003, I am pleased to lay before the States the attached Annual Report of the Commissioner appointed under those Laws.

Article 44(6) of the Regulation of Investigatory Powers (Jersey) Law 2005 requires the report to contain a statement indicating whether any matters have been omitted from it. Article 44(7) allows the Bailiff to exclude any matter from the report laid before the States if it appears to him, after consultation with the Commissioner, that the publication of any matter in an annual report would be contrary to the public interest or prejudicial to national security, the prevention or detection of serious crime, the economic well-being of Jersey; or the continued discharge of the functions of any public authority whose activities include activities that are subject to review by the Commissioner. I am able to inform members that, after consultation with the Commissioner, I have omitted the confidential Annex referred to in Section D of the report.

Article 104(4) of the Police Procedures and Criminal Evidence (Jersey) Law 2003 contains a similar provision, requiring the report laid before the States to contain a statement indicating whether any matters have been omitted from it. Article 104(5) allows the Bailiff to exclude any matter from the report laid before the States if it appears to him, after consultation with the Commissioner, that the publication of any matter in an annual report would be prejudicial to the security of the British Islands or to the detection of crime. I am able to inform members that, after consultation with the Commissioner, I have omitted the confidential index Annex referred to in the report.

BAILIFF OF JERSEY

REPORT

A. THE 2005 LAW

The Regulation of Investigatory Powers (Jersey) Law 2005 (the "2005 Law") makes provision for a comprehensive statutory framework for the use of investigatory powers by public authorities in the Bailiwick. These powers include the interception of communications (formerly regulated by the Interception of Communications (Jersey) Law 1993 (the "1993 Law")), the acquisition and disclosure of communications data, direct and intrusive surveillance and the use of covert human intelligence sources. The power to interfere with property is not within the scope of the 2005 Law, but derives from Part 11 of the Police Procedures and Criminal Evidence (Jersey) Law 2003 (the "2003 Law").

The 2005 Law also provides for the regulation of persons and authorities lawfully entitled to use the techniques described, what use can be made of the material acquired and mechanisms for an oversight of those powers. It establishes safeguards for the investigation of criminal offences and is intended to comply with the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The 2005 Law consists of 4 main Parts (one of which is divided into 2 Chapters), an additional Part and 4 Schedules. The Law is also supplemented by the Regulation of Investigatory Powers (Codes of Practice) (Jersey) Order 2006 (the "Codes").

Part 1

Article 2 defines "interception" in relation to communications, identifies the territorial extent of the 2005 Law and requires that the conduct constituting the interception must take place in Jersey.

Article 3 defines "traffic data": the term has a particular relevance to Part 2, Chapter 2, which is concerned with the obtaining and disclosure of communications data. Article 3(1) defines traffic data as including subscriber information, routing information, data entered in order to effect the re-routing of a telephone call and data which indicates the nature of the communication to which the traffic data relates.

Part 2, Chapter 1

Part 2 of the 2005 Law concerns communications and Chapter 1 is limited to interception. Article 5 creates 2 offences and regulates requests by a person in Jersey to an authority in another country or territory for the interception of a communication.

Article 5(1) makes it an offence, intentionally and without lawful authority, to intercept a communication sent through a public postal service or communicated on a public telecommunications system. This offence replaces that which was enacted by Article 2 of the 1993 Law.

Article 5(2) creates a similar offence in relation to a private telecommunications system otherwise than in circumstances defined in Article 5(3). Article 6 makes provision for a civil right of action for the sender or the recipient of a communication if transmitted by means of a private telecommunications system which is intercepted

without lawful authority and without the express or implied consent of a person having control of the system.

Article 5 also provides for penalty on conviction for these offences and prohibits the institution of proceedings otherwise than by, or with the consent of, the Attorney General. The Article also requires the Attorney General to ensure that when a person in Jersey makes a request for assistance to another country or territory, pursuant to an international mutual assistance agreement, the request has lawful authority.

Article 7 summarizes the circumstances in which the interception may be made lawfully and Article 8 describes circumstances in which a communication may be intercepted without the need for an interception warrant. These circumstances include where both sender and recipient have, or are believed to have, consented to the interception (Article 8(1)), where the sender or the recipient has consented to the interception and the interception has been authorized under Part 3 of the 2005 Law (Article 8(2)), where the interception is carried out by the person providing the postal or telecommunications service and takes place for purposes connected with the provision or operation of the service or for the enforcement of legislation relating to the service (Article 8(3)), and where communication is intercepted whilst being transmitted by wireless telegraphy and the interception is authorized under the Wireless Telegraphy Act 1949 (Article 8(4)).

Article 9 describes where the power may be exercised without the need for a warrant for interception. These circumstances include, for example, an interception conducted in accordance with the Rules made under the Prison (Jersey) Law 1957.

Article 10 describes the circumstances in which the Attorney General may issue a warrant to authorize either the interception of a communication in Jersey and the disclosure of the intercepted material, or the making of a request to another country or territory for interception under an international mutual assistance agreement. The grounds for issuing a warrant are defined in Article 10(2)(a) and (3) and include the interests of national security, the purpose of preventing or detecting 'serious crime' (or to assist another country or territory with such prevention or detection), or the purpose of safeguarding the economic well-being of Jersey (but only where the information which is to be obtained relates to the acts or intentions of people outside Jersey); provided always that the conduct authorized by the warrant is proportionate to what is sought to be achieved by that conduct (Article 10(2)(b)) and provided also that the information sought could not reasonably be obtained by other means (Article 10(4)).

"Serious crime" is defined in Part 1 as conduct which involves the use of violence, results in substantial financial gain or is conduct undertaken by a large number of persons in pursuit of a common purpose, and for which a person who has attained the age of 21 years and has no previous convictions could reasonably be expected to be sentenced to imprisonment for 3 years or more.

Article 11 defines the persons who may apply for an interception warrant. These include the Chief Officer of the States of Jersey Police, the Agent of the Impôts, the Chief Immigration Officer, the Director General of the Security Services, the Chief of the Secret Intelligence Services, the Director of GCHQ, the Chief of Defence Intelligence within the Ministry of Defence, and any person who, for the purpose of an international mutual assistance agreement, is the competent authority of another country or territory.

Article 12 states the requirements for the contents of an interception warrant. The warrant must relate either to a named person or to a single set of premises (Article 12(1)). The warrant must contain a schedule which lists appropriate identifying features of the communications which are to be intercepted. Article 12 also makes provision for an exception to these requirements if the warrant relates only to the interception of communications sent or received outside Jersey and the Attorney General has given a certificate (an "Article 12(4) certificate") detailing the description of the information to be intercepted and the grounds for the interception. Article 20 imposes additional requirements in the case of a warrant accompanied by an Article 12(4) certificate.

Articles 13 and 14 provide for the duration, renewal and modification of interception warrants and Article 13(2)(b) imposes a duty on the Attorney General to cancel a warrant at any time when the grounds for interception cease to be satisfied.

Article 15 describes how an interception warrant is implemented. The person to whom the warrant is addressed must give effect to it and others may be required to provide assistance. Article 15(7) creates an offence of failing to comply with this duty and provides for punishment on conviction. Article 15(8) permits the Attorney General to take injunctive proceedings to enforce it.

Article 16 empowers the Minister to make Orders requiring providers of public postal services and public telecommunications services to maintain interception capabilities in the light of consultations with, among others, the Technical Advisory Board established by Article 17.

Article 19 requires the Attorney General to make arrangements to ensure that intercepted material is distributed and disclosed to the minimum number of people, to restrict the copying of intercepted material, to ensure its secure storage, and to provide for its destruction once there are no longer grounds for retaining it. Article 19(4) defines the purposes for which intercept material may be retained.

Article 21 restricts the use in civil or criminal proceedings of information which might indicate that an interception warrant has been issued, that a communication has been intercepted (whether pursuant to a warrant for interception or, unlawfully, by a person to whom a warrant may have been issued), or that a person has been required to assist in giving effect to a warrant. This Article replaces Article 10 of the 1993 Law.

In respect of Article 22, and in addition to the statutory requirement that all trials are fair (as emphasized in the Attorney General's explanatory "Guidelines to Crown Advocates and Prosecutors"), the Article creates exceptions to the restrictions contained in Article 21. The exceptions include prosecutions for offences under the 2005 Law (or other enactments regarding interception) and in respect of proceedings before the Investigatory Powers Tribunal established by Article 46. Moreover, at the request of a Crown Advocate, the Bailiff is empowered to order disclosure to himself. Thereafter he may require the prosecution in any case to make an admission of fact or facts which the Bailiff considers it essential to be made in the interests of justice.

Article 23 imposes a duty on persons whose office or employment render them privy to the existence of an interception warrant, or the contents of an intercepted communication, to keep that knowledge secret. Article 23(4) creates an offence for

breach of this duty, subject to certain defined defences described in Articles 23(5)–(7), and provides for punishment on conviction.

Part 2, Chapter 2

Part 2, Chapter 2 is concerned with the acquisition and disclosure of communications data, which is defined in Article 24. Article 25 permits the obtaining and disclosure of communications data pursuant to an authorization or notice granted or given by a designated person to a relevant public authority. Such designated persons are listed in Schedule 1 of the 2005 Law and include the Chief Officer of the States of Jersey Police, the Agent of the Impôts, the Chief Immigration Officer and the Attorney General.

By Article 8 of the Regulation of Investigatory Powers (Miscellaneous Provisions) (Jersey) Order 2006 ("the 2006 Order"), the first three mentioned may delegate certain powers under certain Articles in respect of this Chapter of Part 2, and in respect of certain Articles under Part 3, to senior officers within their respective agencies.

Article 26 confers the power to grant authorization and to give notices. An authorization allows the relevant public authority to collect and retrieve data. A notice given to a postal or telecommunications operator may require that operator to collect or retrieve the data and to provide it to the public authority which has served the notice (see Schedule 3, paragraph 5.1 of the Codes). Such an authorization or notice may be granted or given where the issuance is necessary and proportionate. According to Article 26 issuance may be necessary in a number of different circumstances which include the interests of national security, the prevention or detection of crime or the prevention of disorder, the interests of the economic well-being of Jersey, the interests of public safety, the protection of public health, the assessment or collection of any tax, duty or other charge lawfully payable, the prevention or mitigation of any injury or damage to the health of an individual, or for any other purpose which may be specified in Regulations made by the States. The meaning of proportionality is explored in Schedule 3, paragraph 4.4 of the Codes in the context of Convention rights, and includes questions of collateral intrusion (see Schedule 3, paragraph 5.1 of the Codes).

Article 27 defines the period during which the authorization or notice takes effect and stipulates that the designated person must cancel the notice if it is no longer necessary (as defined in Article 26(4)) or if the conduct required by it has become disproportionate to what is sought to be achieved.

Part 3

Part 3 is concerned with directed and intrusive surveillance and covert human intelligence sources. These are defined in Articles 30–32.

Article 33 renders such surveillance and the use of covert human intelligence sources lawful if authorized under this part of the 2005 Law.

Article 34 empowers certain designated persons, who are listed in Parts 1 and 2 of Schedule 2 (as enacted by Article 36) and who include the Chief Officer of the States of Jersey Police, the Agent of the Impôts, the Chief Immigration Officer and the Attorney General, to authorize directed surveillance in accordance with Article 34.

Under Article 34(2) a designated person shall not grant such an authorization unless the authorization is necessary and proportionate to what is sought to be achieved by carrying it out. In accordance with Article 34(3) the grounds of necessity include the interests of national security, the prevention or detection of crime or the prevention of disorder, the interests of the economic well-being of Jersey, the interests of public safety, the protection of public health, the assessment or collection of any tax, duty, levy or other imposition, or for any other purpose specified in Regulations made by the States. Considerations of proportionality include, among other matters, considerations of collateral intrusion (see Schedule 4, paragraph 2.6 of the Codes) and, where intrusive surveillance is concerned, whether the information sought could reasonably be obtained by other means (see Schedule 4, paragraph 5.9 of the Codes).

Article 35 (in conjunction with the Codes) empowers a designated person to authorize the use of covert human intelligence sources. The designated persons are those described above in respect of directed surveillance. Similarly, the grounds of authorization for the use of such a source are the same as those which apply in respect of directed surveillance. But there are additional requirements. An officer of the relevant public authority must be deputed to have day to day responsibility for contact with each source and for the welfare of each source (Article 35(5)(a)), a different officer must be appointed to oversee the use of the source (Article 35(5)(b)), a record must be kept of the use made of the source (Article 35(5)(c) and (d)), and there must be restricted access to details of the identity of the source (Article 35(5)(e)). In addition certain specific provisions are enforced by the Codes if the source is a person under the age of 18 years.

Article 37 is concerned with intrusive surveillance. The Attorney General may authorize intrusive surveillance but only a limited number of persons may apply to him for an authorization. These include the Chief Officer of the States of Jersey Police, the Agent of the Impôts, the Chief Immigration Officer, a member of the Intelligence Services, an official of the Ministry of Defence or a member of Her Majesty's forces: the last two mentioned are restricted in the circumstances in which they may apply for authorization (Article 37(4)). An authorization can only be given by the Attorney General on specified grounds. These grounds must relate to the interests of national security, the prevention or detection of serious crime, or the interests of the economic well-being of Jersey (Article 37(3)). The surveillance must be proportionate to what is to be achieved by it and the Attorney General must consider whether the information sought could reasonably be obtained by other means (Article 37(5)).

Article 38 includes a provision empowering the Attorney General to combine an authorization issued under Part 3 with an authorization issued under Article 101 of Part 11 of the 2003 Law. The latter Article permits the Attorney General to authorize any act in relation to property or wireless telegraphy as is necessary to prevent or detect serious crime or to safeguard the interests of the security of Jersey, provided that the act being authorized is proportionate to what is sought to be achieved.

Article 40 contains general provisions regarding authorizations under Part 3 of the 2005 Law which include the periods during which authorizations, whether oral or in writing and whether for directed or intrusive surveillance or in respect of a covert human intelligence source, may be granted, including the periods for which they may be renewed. Article 41 contains provisions emphasizing the importance of cancelling

an authorization once the grounds for its existence no longer persist and, in any case relating to the use of a covert human intelligence source, if the arrangements required by Article 35 are no longer in place.

Part 4

Part 4 relates to the powers and duties of the Investigatory Powers Commissioner who must be an Ordinary Judge of the Court of Appeal. The Commissioner is enjoined to keep under review the exercise and performance of the powers and duties conferred or imposed on the Attorney General under Articles 5–15 and 19 (interception), under Chapter 2 of Part 2 (communications data) and under Part 3 (surveillance and covert human intelligence sources), and on other persons on whom powers and duties are conferred or imposed under Chapter 2 of Part 2 or under Part 3. The Commissioner is also obliged to give all such assistance, as may be required, to the Tribunal established by Article 46.

Article 44 imposes a duty on a large number of office holders and individuals, listed in Article 44(1)(a)–(n), to disclose or to provide to the Commissioner any document or information which the Commissioner may require to enable him to carry out his functions under the 2005 Law; and Article 39 imposes a specific obligation on the Attorney General to notify the Commissioner at least every 12 months of authorizations for intrusive surveillance which he has granted, renewed or cancelled.

If the Commissioner becomes aware of any contravention of the provisions of the 2005 Law or if he considers that any of the arrangements made under Article 19 are inadequate, he is required to bring the contravention or those inadequacies to the attention of the Bailiff in a Report in respect of his functions which he must make to the Bailiff as soon as possible after the end of each calendar year (Article 44(4)). Such a Report must be laid before the States.

However, if it appears to the Bailiff, after consultation with the Commissioner, that the publication of any matter in such a Report would be contrary to the public interest or prejudicial to national security, the prevention or detection of serious crime, the economic well-being of Jersey or the continued discharge of the functions of any public authority whose activities include activities which are the subject of review by the Commissioner, the Bailiff may exclude that matter from the copy of the Commissioner's Report laid before the States (Article 44(7)).

Article 46 establishes the Investigatory Powers Tribunal. The Tribunal consists of an Ordinary Judge of the Court of Appeal (who is to preside), 3 members appointed by the Superior Number of the Royal Court, and 3 Jurats. Broadly, the Tribunal's jurisdiction is to hear proceedings concerning actions of the intelligence services which are incompatible with the European Convention on Human Rights, proceedings concerning investigatory powers regulated by the 2005 Law or entry on or interference with property or wireless telegraphy conducted by public authorities, complaints by persons who believe that they have been subject to the use of investigatory powers, entry on or interference with property or interference with wireless telegraphy in certain challengeable circumstances, and complaints by persons who believe that they have suffered detriment as a consequence of a breach of the duty to secure a key to protected information.

Article 48 requires the Tribunal to determine proceedings in which it has jurisdiction and to apply the same principles in doing so as would be applied in judicial review proceedings. In determining any proceedings or complaint the Tribunal may make such order as it thinks fit including an order for compensation.

Subject to any rules made by the Bailiff under Article 50, Article 49 provides that the Tribunal may determine its own procedures. The Tribunal can require the Investigatory Powers Commissioner to provide it with assistance and is required to keep the Commissioner informed of proceedings before it. If the Tribunal makes a determination in favour of a complaint which relates to an act or omission on behalf of the Attorney General or to conduct for which the Attorney General has given any warrant, authorization or permission, the Tribunal must report its finding to the Bailiff. The persons who are under a duty to provide information to the Commissioner under Article 44 are under a like duty to provide information to the Tribunal.

B. THE 2003 LAW

Article 101 provides that the Attorney General may authorize the taking of any action in respect of property or wireless telegraphy if he believes that the action is necessary for preventing or detecting serious crime or is in the interests of the security of Jersey and the action is proportionate to what it seeks to achieve.

The Attorney General is also enjoined to consider whether what it is necessary to achieve by the authorized action could reasonably be achieved by other means (Article 101(3)).

"Serious crime" is defined in Article 101(4) as follows –

> "(4) In this Article "serious crime" means –
>
> (a) conduct which constitutes one or more offences –
>
> (i) which involves the use of violence, results in substantial financial gain or is conducted by a large number of persons in pursuit of a common purpose, or
>
> (ii) for which a person who has attained the age of 21 and has no previous convictions could reasonably be expected to be sentenced to imprisonment for 3 years or more; or
>
> (b) conduct which is, or corresponds to, any conduct which, if it all took place in Jersey, would constitute an offence, or offences, of the kind referred to in sub-paragraph (a)."

Article 102 defines the circumstances in which an authorization may be given orally, and for the form and duration of oral and written authorizations.

Article 103 imposes a duty on the Attorney General to provide a written report every 12 months to the Commissioner in respect of all written or oral authorizations given under Article 101 in the past 12 months.

Article 104 regulates the powers and duties of the Commissioner who shall be one of the Ordinary Judge of the Court of Appeal, who shall keep under review the powers

exercised by the Attorney General under Articles 101–103 and who shall make a Report to the Bailiff as soon as practicable after the end of each year.

Article 104(4) requires the Bailiff to lay a copy of the Report of the Commissioner before the States. But if it appears to the Bailiff, after consultation with the Commissioner, that the publication of any matter in the Report would be prejudicial to the security of the British Islands or to the detection of crime, the Bailiff may, in accordance with Article 104(5), exclude that matter from the copy of the Report laid before the States.

C. MY INVESTIGATION GENERALLY

The purpose of the 2003 Law and the 2005 Law was to place on a statutory footing a range of activities formerly undertaken by public authorities in accordance with guidelines laid down by each authority. As I have made clear, apart from the interception of postal and telecommunications, which were formerly regulated by the 1993 Law and which were incorporated with some modifications into the 2005 Law, none of the activities with which Part 2, Chapter 2 and Part 3 are concerned were the subject of any statutory codification prior to 2006. Nor were any of the activities which are now regulated by Part II of the 2003 Law.

I have received reports from Police and from Customs concerning the operation of both Laws for the period 1st January – 31st December 2011 and I have had the opportunity of discussing these reports and other matters with senior officers of these authorities and with the Law Officers.

Notwithstanding the duties imposed on the persons described in Article 44(1) of the 2005 Law, I am grateful to those who have given their time to enable me to discharge my functions under both Laws. In particular I would like to thank members of the Law Officers' Department, including the Attorney General and the Solicitor General, as well as the Secretary to the Attorney General, Miss Sally Bliault, and also to Mrs. Caroline Coleman and Miss Katie Ridley. I record my gratitude to the Chief Officer of Police and his Officers, and to the Agent of the Impôts and his Officers for their courtesy, co-operation and forbearance. I am satisfied that I have had access to the necessary documentation and to the relevant personnel in order properly to discharge my functions under Article 43(2).

I have been impressed by the way in which those responsible for their implementation have operated both Laws during 2011. The documentation which I have seen and the discussions which I have had with those most nearly concerned have convinced me that the quantity and quality of the information obtained as a result of the proper and effective operation of these Laws has contributed significantly to the prevention and detection of crime, particularly serious crime, within the Bailiwick during the reporting period.

The 2005 Law: Part 2, Chapter 1

I am satisfied that those responsible for applying for interception warrants and those concerned in their grant or refusal, renewal or cancellation appreciate the nature of the activities being undertaken and conscientiously apply the criteria laid down by the 2005 Law and the Codes. I have, for example, seen documentation which has

demonstrated to me that the Law Officers and the Chief Officers concerned have rigorously applied the appropriate tests and have refused applications when, in their view, one of the tests has not been met.

I emphasize in particular applications and authorizations under this Part and Chapter of the 2005 Law. The interception of communications is a significant infringement of the rights of the individual and it is especially important that those responsible for making application for such warrants, and those responsible for granting them, appreciate the sensitive, secret and intrusive nature of interception.

I am satisfied that the safeguards described in Article 10 have been applied, and that due and proper regard has been paid to the criteria of necessity and proportionality (Articles 10(2) and (3)), as well as to the criteria whether the information sought could reasonably be obtained by other means (Article 10(4)).

I am also satisfied that appropriate consideration has been given to questions of collateral intrusion (see Schedule 2, paragraph 3.1. of the Codes) and to questions relating to "confidential information" (see Schedule 2, paragraph 3.2. and 3.8–10 of the same). My attention has not been drawn to any communication which concerned "an unusual degree of collateral intrusion", as envisaged by the provisions of Schedule 2, paragraph 4.2 of the Codes.

I am satisfied that arrangements have been in force to satisfy the requirements of Article 19. I confirm that no breach of these safeguards has been brought to my attention in accordance with Schedule 2, paragraph 5.1 of the Codes and no material has been disclosed to me which has been retained for the purpose of facilitating any of my functions as Commissioner in accordance with Article 19(4)(c).

It is particularly important in the context of this Part of the 2005 Law that there exists an effective system of vetting and supervision by senior officers of those responsible for interceptions. I am satisfied that such exist and that these have operated effectively during the period with which this report is concerned.

The 2005 Law: Part 2, Chapter 2

I have made enquiries of the way in which communications data have been acquired during the period. I am satisfied that the obligations defined in Article 26 are understood, particularly in regard to necessity (Article 26(1) and (2)) and proportionality (Article 26(5)). I am also satisfied that appropriate procedures as to the form and duration of authorizations and notices under Article 27 have been in place to ensure compliance with these obligations in conformity with Schedule 3, paragraphs 5.9–12 of the Codes.

No error in the grant of an authorization or the giving of a notice has been drawn to my attention (as envisaged by Schedule 3, paragraph 7.2 of the Codes) during the course of the year or at the time of my audit.

The 2005 Law: Part 3

Certain surveillance activity is as sensitive and intrusive as the interception of communications, and it is essential that the criteria established by Article 34 concerning necessity and proportionality are satisfied. It is apparent to me that these

criteria are understood by the relevant personnel and that appropriate safeguards exist to ensure that they are tested whenever an application is made. I am also satisfied that similar such provisions relating to the use of covert human intelligence sources under Article 35 have been followed. I have considered the arrangements which are in place to satisfy the requirements of Article 35(5) and I conclude that these arrangements meet the relevant criteria. No incident regarding a covert human intelligence source has been drawn to my attention in the terms contemplated by Schedule 5, paragraphs 3.7–10 of the Codes.

No material has been provided to me in accordance with Schedule 4, paragraphs 3.7, 3.9 or 3.10 (as defined in paragraphs 3.11–13) of the Codes, as material which I should feel obliged to inspect as part of my functions as Commissioner. I am satisfied that no incident has occurred which would engage the provisions of Schedule 4, paragraph 4.14 concerning an officer granting an application for directed surveillance in an operation in which he was involved in another capacity.

I have had the advantage of considering a report made to me by the Attorney General in respect of intrusive surveillance in accordance with his obligations under Article 39.

I have also considered documentation brought into existence under Article 40 and 41 in order to comply with the general rules for the grant, renewal and duration of authorizations under this Part of the 2005 Law. I am satisfied that the documentation which I have seen meets the criteria defined.

The 2003 Law: Part 11, Article 103

I have considered a report submitted to me by the Attorney General in satisfaction of the obligations imposed on him by Article 103.

D. THE CONFIDENTIAL APPENDIX

In accordance with Article 44(7) of the 2005 Law, the Bailiff may exclude from publication any matter contained in the Commissioner's Report if he considers, having consulted the Commissioner, that the publication of such matter would be contrary to the public interest or prejudicial to any of the considerations mentioned in Article 44(7).

I am satisfied that there are matters which I need to communicate to the Bailiff in the proper discharge of my functions under the 2005 Law, the publication of which would be both contrary to the public interest and which would be prejudicial in respect of one or more of the ways defined in Article 44(7) and, in particular, the prevention or detection of serious crime (Article 44(7)(b)) and the continued discharge of the functions of certain public authorities (Article 44(7)(d)).

Further, in accordance with Article 104(5) of the 2003 Law, if it appears to the Bailiff, after similar consultation, that the publication of any matter in the Report of the Commissioner under that Law would be prejudicial to the security of the British Islands or to the detection of crime, the Bailiff may take a similar course.

I am satisfied that there are matters which I must communicate to the Bailiff in the proper discharge of my functions under the 2003 Law, the publication of which would be prejudicial in one of the ways defined in Article 101(5).

Lest the Bailiff should agree that the criteria under both Laws are engaged in respect of that information, I have included such information in a Confidential Appendix which I attach to this Report.

SIR JOHN NUTTING, BT. Q.C.
20th May 2012