

# STATES OF JERSEY



## DRAFT STATES OF JERSEY POLICE FORCE (AMENDMENT No. 2) LAW 201-

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Lodged au Greffe on 21st April 2017  
by the Minister for Home Affairs

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STATES GREFFE





Jersey

## **DRAFT STATES OF JERSEY POLICE FORCE (AMENDMENT No. 2) LAW 201-**

### **European Convention on Human Rights**

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Minister for Home Affairs has made the following statement –

In the view of the Minister for Home Affairs, the provisions of the Draft States of Jersey Police Force (Amendment No. 2) Law 201- are compatible with the Convention Rights.

Signed: **Deputy K.L. Moore of St. Peter**

*Minister for Home Affairs*

Dated: 10th April 2017

## REPORT

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This proposed amendment to the States of Jersey Police Force Law 2012 (“the Law”) is intended to provide for a number of changes, as detailed below.

### **Independent Custody Visitors**

The States Assembly decided in 2009 to adopt proposition [P.122/2009 \(as amended\)](#) regarding the establishment of a Custody Visitor Scheme, which would enable independent custody visitors to inspect the manner in which persons are detained in police custody. At the time, it was noted that such a scheme would usually be overseen by a police authority, but that no such authority was yet established. As a consequence, the scheme was established by the Minister for Home Affairs, who also made the necessary appointments.

Following the establishment of the Jersey Police Authority (“the Authority”) arising from the adoption of the Law, the operation of the Independent Custody Visitor (“ICV”) scheme was reconsidered during 2015, and the management and oversight of the scheme was transferred to the Authority ([R.94/2015](#)).

The Deputy Chief Minister signed a Ministerial Decision ([MD-C-2015-0134](#)) on 27th November 2015, instructing officers to make arrangements for the United Nations (“UN”) Optional Protocol to the Convention Against Torture (“OPCAT”) to be extended to Jersey once all legislative and administrative actions had been taken to ensure Jersey’s compliance. The objective of OPCAT is to require the establishment of a system of regular visits undertaken by independent bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment. The UK ratified OPCAT in 2003. OPCAT ratification has since been extended to the Isle of Man and it is understood that Guernsey is also working towards OPCAT compliance.

The Minister for Home Affairs signed a Ministerial Decision (MD-HA-2016-0063) on 7th November 2016, instructing the preparation of an amendment to the Law to allow for the ICV scheme to be placed on a statutory footing. The proposed amendment is consistent with the requirements of OPCAT, as implemented elsewhere in the British Isles. For example, the *Police and Fire Reform (Scotland) Act 2012*, Chapter 16, provides a statutory basis for similar custody visiting arrangements in Scotland.

The Authority would continue to be responsible for making the necessary arrangements for the ICV scheme, including the appointment of independent custody visitors, making arrangements for visiting detainees, and reporting on the conditions of detention. There is also a need to ensure appropriate coverage of those in the lawful custody of the Jersey Customs and Immigration Service (“JCIS”). The opportunity has been taken, therefore, to extend the ICV scheme so that it covers not just those in the lawful custody of the Police, but also the JCIS, thereby ensuring more complete coverage from an OPCAT perspective. The Authority would report each year on the working of the ICV scheme and the Minister for Home Affairs would present such annual reports to the States Assembly.

The amendment also includes provision for the Authority to make arrangements to ensure that the UN Sub-Committee on the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (“the SPT”) can visit and monitor conditions of detention. These provisions would only become relevant as and when Jersey requests that the UK membership of OPCAT be extended to the Island. The SPT is made up of 25 independent and impartial experts from around the world.

The SPT started its work in February 2007, and generally visits a small number of States Parties each year. For example, during 2015, the SPT visited Azerbaijan, Nauru, Guatemala, Philippines, Netherlands, Italy, Turkey and Brazil. The SPT has not conducted an official visit to the British Isles since OPCAT was ratified by the UK in 2003.

There is a wider project underway in order to address the overall requirements of OPCAT in a Jersey context, including the establishment of a ‘national preventative mechanism’ covering all places of detention, which it is hoped should enable OPCAT to be extended to Jersey during 2018.

### **Charging for States of Jersey Police (“SoJP”) goods and services**

The Education and Home Affairs Scrutiny Panel presented a report to the States Assembly on 11th March 2008 entitled *Policing of Events: User Pays?* ([S.R.4/2008](#)). The Panel concluded that it would not be inappropriate for a ‘user pays’ charge to be introduced.

The Law introduced the facility for the Chief Officer of the SoJP to make charges for the provision of police services, having sought the approval of the Minister. It was thought at the time that the conditions and circumstances in which a charge would be made could be set out in Regulations.

Since then, the National Police Chiefs’ Council (“NPCC”), known previously as the Association of Chief Police Officers (“ACPO”), has issued *National Policing Guidelines on Charging for Police Services* (April 2015). The SoJP are members of the NPCC, along with the Guernsey Police, Isle of Man Constabulary, other forces from around the British Isles, the Royal Gibraltar Police and the Royal Military Police. The published guidelines provide comprehensive advice on police cost recovery, and reflect necessary adjustments to charging regimes as a result of recent UK case law. The underlying principle is that chargeable activity should ultimately support and not undermine the core purpose of providing a public police service.

The guidelines recognise that, whilst the police service is provided out of public funds for the benefit of the Public at large, there are a limited range of activities where it is appropriate for police services to make charges to individuals or organisations to recover costs. The guidelines set a number of key principles, including that: charging policy should have regard to overall policing objectives; charging policy should reflect proper accountability; private persons/bodies should not be able to profit at the expense of the police service; charges should be based on a robust and sound costing methodology; the policy and all charging decision-making should be clear and transparent to both providers and receivers of the service.

In relation to events, the guidelines require that charging policy distinguishes between different categories of event, in particular: commercial events, intended to generate private profit; non-commercial events (i.e. charitable or community events); and statutory events reflecting constitutional rights or processes. The guidelines specify that the policing of statutory events is part of core activity and that no charges should be made. The guidelines also specify that maintaining the trust and confidence of local communities is a proper factor to take into account in considering the policing of community events, making it appropriate to abate charges for such non-commercial events.

This amendment would enable the Chief Officer of the SoJP to charge for police goods and services in accordance with guidelines issued by the Minister – such charging guidelines to take into account those issued by the NPCC.

The SoJP intend to conduct a full process of consultation during 2017 regarding how the NPCC guidelines might be adapted appropriately for Jersey. It is anticipated that the guidelines might be adopted in phases, dealing first with the charging of relatively straightforward goods and services, such as the provision of copies of accident reports, and thereby allowing more time to consult widely on areas where there is more public and cross-government interest, such as events.

### **States' employees and contractors undertaking police functions**

The Law provided for Regulations to be made which would enable States' (civilian) employees to carry out certain specified functions of a police officer, and for the way in which complaints against, or misconduct by, a civilian employee would be dealt with whilst they are carrying out the functions of a police officer. The Law also provided for Regulations to enable the Chief Officer of the SoJP to enter into agreements with contractors for the performance of services which are usually undertaken by police officers.

This provision in the Law is consistent with the position elsewhere in the British Isles, where, for example, civilian investigation officers, trained in the techniques of criminal prosecutions, and civilian detention and escort officers, responsible for the detention and well-being of persons brought into custody and their escort, have been a feature of modern British policing for a number of years.

Upon review however, other jurisdictions in the British Isles were found to generally make such provisions in their respective primary laws, rather than through secondary regulations. Consistent with that approach, this amendment sets out as part of the Law the circumstances in which the Chief Officer of the SoJP can designate a civilian employee as an officer carrying out the specified police functions of an investigating officer, detention officer or escort officer. The powers and duties for each designated officer are set out in a new Schedule 2. The procedures for dealing with complaints against civilian employees carrying out these designated police functions are set out in a new Schedule 3. The procedures relating to the investigation of complaints which apply to police officers will also apply to such designated civilian employees. Once a police complaint has been investigated, the Chief Officer of the SoJP must then take a view on whether the conduct investigated would justify further action by the States as the employer under the States' internal disciplinary or performance policies.

The Law would also specify the circumstances in which the Chief Officer of the SoJP can designate the employee of a contractor as an officer carrying out the specified police functions of detention officer or escort officer. The Chief Officer can designate such an employee only if they have entered into an agreement with the contractor for the provision of police detention or escort services, following consultation with the Minister for Home Affairs and the Police Authority. The powers and duties for each designated detention officer or escort officer would be the same as those for civilian employees as set out in the new Schedule 2. The provisions made by the new Schedule 3 concerning complaints, would apply in a similar way to a contractor's designated employee, culminating in the Chief Officer taking a view as to whether the conduct investigated justifies further action under the contractor's own disciplinary and performance policies.

Whilst this opportunity is being taken to align the Law with similar provisions found elsewhere in the British Isles, it is understood that the SoJP do not currently have active plans for the widespread introduction of such designated civilian or contract employees, although this possibility is likely to be explored in the coming years in accordance with modern approaches to British policing.

**Collective responsibility under Standing Order 21(3A)**

The Council of Ministers has a single policy position on this proposition, and as such, all Ministers, and the Assistant Minister for Home Affairs, are bound by the principle of collective responsibility to support the proposition, as outlined in the Code of Conduct and Practice for Ministers and Assistant Ministers.

**Financial and manpower implications**

There are no financial or manpower implications for the States arising from the adoption of this draft Law.

**Human Rights**

The notes on the human rights aspects of the draft Law in the **Appendix** have been prepared by the Law Officers' Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

## APPENDIX TO REPORT

### Human Rights Notes on the Draft States of Jersey Police Force (Amendment No. 2) Law 201-

These notes have been prepared in respect of the Draft States of Jersey Police Force (Amendment No. 2) Law 201- by the Law Officers' Department. They summarise the principal human rights issues arising from the contents of the draft Law and explain why, in the Law Officers' opinion, the draft Law is compatible with the European Convention on Human Rights ("ECHR") as implemented under the Human Rights (Jersey) Law 2000.

**These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.**

The first change made by this draft Law is a technical amendment to provisions on the charging for police goods and services. It removes the provision allowing for Regulations in this respect. Instead, charges made by the Police will need to be in accordance with guidelines issued by the Minister, which in turn must take account of the equivalent issued by the National Police Chiefs' Council. This gives rise to no human rights concerns. Charging for certain police services (e.g. attendance at events) is common. The use of the National Police Chiefs' Council guidelines as a standard to be taken into account promotes the use of an independent standard, as deviations from that standard would need to be explained and justified before the States Assembly. It also should prevent an expensive re-invention of the wheel.

The second and much greater change has been to allow non-police officers to undertake certain police functions, namely those of investigating officer, detention officer and escort officer. The European Convention on Human Rights is neutral as to the status of those who carry out policing functions, although obviously highly interested in how those functions are carried out in practice (e.g. the potential for degrading treatment contrary to Article 3, deprivation of liberty contrary to Article 5, and invasions of privacy contrary to Article 8). It is important to the Convention that the coercive powers of the state are exercised in accordance with law, and this means that those exercising those powers are properly accountable (e.g. *Gafgen v Germany* (2010) 52 EHRR 1 [124]-[125]). In this respect, the new Schedule 3 to the principal Law ensures that civilians with policing functions fall under the relevant provisions for complaints, discipline and conduct matters.

Finally, in respect to prison visitors, the conditions of prisoners are plainly of great concern to the European Convention – in particular Article 3 rights as to freedom from torture or degrading treatment. The Convention does not prescribe how the State should ensure that prisoners are held in Convention compliant conditions. It is difficult to see how the proposed system – which is designed to comply with more detailed international standards under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment – could of itself promote a failure to comply with relevant Convention Rights.

In short, there are no human rights concerns with this draft Law.



## Explanatory Note

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This Law amends the States of Jersey Police Force Law 2012 (“principal Law”).

### *Part 1 – preliminary*

*Article 1* is an interpretation provision.

### *Part 2 – Charging for goods and services*

*Article 2* substitutes a new provision in the principal Law which will enable the Chief Officer to charge for police services and goods. The existing provision in the principal Law requires the States to make Regulations setting out the circumstances in which charges may be made for goods and services. The new provision instead requires charges to be in accordance with guidelines issued by the Minister. In preparing such guidelines, the Minister must take into account the guidelines on charging for police services and goods issued by the National Police Chiefs’ Council of the United Kingdom (the successor body to the Association of Chief Police Officers of England, Wales and Northern Ireland).

### *Part 3 – States’ employees and contractors undertaking police functions*

*Article 3* inserts definitions in the principal Law which are relevant to the new provisions inserted in the principal Law by *Part 3*.

*Article 4* and the **new Schedules 2 and 3** inserted by *Article 6* substitute new provisions in place of the existing Articles 26 and 27 which enable States’ employees and employees of contractors to undertake certain specified police functions. The existing provisions in the principal Law require the States to make Regulations setting out the circumstances in which States’ employees and employees of contractors can be designated to carry out police functions. The substituted new provisions set out the detail in the principal Law itself with a provision enabling the detail to be changed by Regulations.

The **substituted Article 26** sets out the circumstances in which the Chief Officer can designate a States’ employee as an officer carrying out specified police functions, that is, the functions of an investigating officer, detention officer or escort officer. The Chief Officer must be satisfied that the employee who is designated is suitable and has received adequate training. The specific powers and duties for each designated officer are set out in a **new Schedule 2** which is added to the principal Law. The procedures for dealing with complaints against States’ employee carrying out police functions pursuant to a designation are set out in a **new Schedule 3** which is inserted in the principal Law. The effect of the **new Schedule 3** is to modify provisions in the Police (Complaints and Discipline) (Jersey) Law 1999 and the Police (Complaints and Discipline Procedure) (Jersey) Order 2000 so that that the procedures relating to the investigation of a complaint that apply to police officers also apply to States employees. Once a complaint has been investigated with the involvement of the Jersey Police Complaints Authority as provided for in the Law and Order, subject to the Attorney General’s consideration as to whether criminal proceedings would be justified, the Chief Officer must take a view on whether the conduct investigated would justify further action by the States as employer under the States’ internal disciplinary or performance policies.

The **substituted Article 27** sets out the circumstances in which the Chief Officer can designate the employee of a contractor as an officer carrying out specified police functions that is, the functions of detention officer or escort officer. The Chief Officer

can designate such an employee only if the Chief Officer has entered into an agreement with the contractor for the provision of police detention or escort services following consultation with the Minister for Home Affairs and the Police Authority. The specific powers and duties for each designated detention officer or escort officer are the same as those for States' employees that are set out in the **new Schedule 2**. The modifications made by the **new Schedule 3** described above concerning complaints apply in a similar way to a contractor's employee designated under the **new Article 27** culminating in the Chief Officer taking a view as to whether the conduct investigated would justify further action by the contractor under the contractor's own disciplinary and performance policies.

*Article 5* amends the principal Law by numbering the existing Schedule.

*Article 7* amends the Police Procedures and Criminal Evidence (Jersey) Law 2003 by deleting some references to a "civilian support officer" which are no longer required as a consequence of the provisions in the **new Articles 26 and 27** described above.

*Part 4 – arrangements for independent custody visitors*

This Part makes provision for arrangements to be made by the Police Authority for independent custody visiting in order to monitor the conditions of persons detained ("detainees") by the police, customs officers or immigration officers.

*Article 8* amends the long title of the principal Law to cover the arrangements relating to independent custody visiting.

*Article 9* inserts new provisions in the principal Law which set out in detail the arrangements that must be made by the Police Authority for independent custody visiting of detainees. The **inserted Article 28A** requires the Police Authority to make arrangements for persons to be appointed as "independent custody visitors" and for them to visit detainees and report on their conditions of detention. The **inserted Article 28B** requires the Police Authority to make arrangements to ensure that the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment can visit and monitor the conditions of detention of detainees. (The subcommittee was established under the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.) The **inserted Article 28C** requires the Police Authority to report to the Minister for Home Affairs on the working of arrangements made under Articles 28A and 28B.

*Part 5 – Closing*

*Article 10* sets out the title of the Law and provides that it will come into force 7 days after the day it is registered.



Jersey

## **DRAFT STATES OF JERSEY POLICE FORCE (AMENDMENT No. 2) LAW 201-**

### **Arrangement**

#### **Article**

<b>PART 1</b>	<b>13</b>
<hr/>	
PRELIMINARY	13
1 Interpretation .....	13
<b>PART 2</b>	<b>13</b>
<hr/>	
CHARGING FOR GOODS AND SERVICES	13
2 Article 24 substituted .....	13
<b>PART 3</b>	<b>14</b>
<hr/>	
STATES' EMPLOYEES AND CONTRACTORS UNDERTAKING POLICE FUNCTIONS	14
3 Article 1 amended .....	14
4 Articles 26 and 27 substituted .....	14
5 Article 32 amended .....	17
6 Numbering of existing Schedule and Schedules 2 and 3 inserted.....	17
7 Police Procedures and Criminal Evidence (Jersey) Law 2003 amended .....	17
<b>PART 4</b>	<b>17</b>
<hr/>	
ARRANGEMENTS FOR INDEPENDENT CUSTODY VISITORS	17
8 Long title of principal Law amended .....	17
9 Articles 28A, 28B and 28C inserted.....	18
<b>PART 5</b>	<b>21</b>
<hr/>	
CLOSING	21
10 Citation and commencement .....	21
<b>SCHEDULE</b>	<b>22</b>
<hr/>	
SCHEDULES 2 AND 3 INSERTED	22





Jersey

## **DRAFT STATES OF JERSEY POLICE FORCE (AMENDMENT No. 2) LAW 201-**

**A LAW** to amend further the States of Jersey Police Force Law 2012.

*Adopted by the States* [date to be inserted]

*Sanctioned by Order of Her Majesty in Council* [date to be inserted]

*Registered by the Royal Court* [date to be inserted]

**THE STATES**, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

### **PART 1**

#### **PRELIMINARY**

#### **1 Interpretation**

In this Law, “principal Law” means the States of Jersey Police Force Law 2012<sup>1</sup>.

### **PART 2**

#### **CHARGING FOR GOODS AND SERVICES**

#### **2 Article 24 substituted**

For Article 24 of the principal Law there shall be substituted the following Article –

#### **“24 Charges for police goods and services**

- (1) The Chief Officer may charge for the provision of police goods and services where such provision is reasonably incidental to normal police activity and the amount charged is in accordance with guidelines issued by the Minister.

- (2) In preparing guidelines for the purposes of this Article the Minister must take into account the guidelines on charging for police services (including goods) issued by the National Police Chiefs' Council of the United Kingdom or any successor body to that Council."

### PART 3

#### STATES' EMPLOYEES AND CONTRACTORS UNDERTAKING POLICE FUNCTIONS

#### 3 Article 1 amended

In Article 1 of the principal Law –

- (a) before the definition "Annual Policing Plan" there shall be inserted the following definition –
- " '2003 Law' means the Police Procedures and Criminal Evidence (Jersey) Law 2003<sup>2</sup>;"
- (b) after the definition "police officer" there shall be inserted the following definition –
- " 'States' employee' has the same meaning as in Article 2 of the Employment of States of Jersey Employees (Jersey) Law 2005<sup>3</sup>;"

#### 4 Articles 26 and 27 substituted

For Articles 26 and 27 of the principal Law there shall be substituted the following Articles –

##### "26 States' employees designated to undertake police functions

- (1) The Chief Officer may designate in writing a States' employee as an officer of one or more of the descriptions specified in paragraph (2).
- (2) Those descriptions of officer are as follows –
- (a) investigating officer;
- (b) detention officer;
- (c) escort officer.
- (3) The Chief Officer shall not designate a States' employee under paragraph (1) unless the Chief Officer is satisfied that the States' employee –
- (a) is a suitable person to carry out the functions for the purposes of which he or she is designated;
- (b) is capable of effectively carrying out those functions; and
- (c) has received adequate training in the carrying out of those functions and in the exercise and performance of the powers

- and duties to be conferred or imposed on him or her under the designation.
- (4) A States' employee designated under this Article shall have the powers and duties conferred or imposed on him or her by the designation.
- (5) Powers and duties may be conferred or imposed on a designated person by means only of the application to him or her by the designation of provisions of the applicable Part of Schedule 2 that are to apply to the designated person, and, for this purpose, the applicable Part of that Schedule is –
- (a) Part 1, in the case of a person designated as an investigating officer;
- (b) Part 2, in the case of a person designated as a detention officer;
- (c) Part 3, in the case of a person designated as an escort officer.
- (6) A States' employee authorized or required to do anything by virtue of a designation under this Article –
- (a) shall not be authorized or required by virtue of that designation to engage in any conduct otherwise than in the course of that employment; and
- (b) shall be so authorized or required subject to such restrictions and conditions (if any) as may be specified in his or her designation.
- (7) Where any power exercisable by any person in reliance on his or her designation under this Article is a power which, in the case of its exercise by a police officer, includes or is supplemented by a power to use reasonable force, any person exercising that power in reliance on that designation shall have the same entitlement as a police officer to use reasonable force.
- (8) Where any power exercisable by any person in reliance on his or her designation under this Article includes power to use force to enter any premises, that power shall not be exercisable by that person except –
- (a) in the company, and under the supervision, of a police officer; or
- (b) for the purpose of saving life or limb or preventing serious damage to property.
- (9) For the purpose of the handling of complaints relating to, or other instances of misconduct involving, the carrying out of the functions of an officer by a States' employee designated under paragraph (1), Schedule 3 shall have effect.
- (10) The States may, by Regulations amend paragraphs (2) and (4) and, in relation to a person designated under this Article, Schedules 2 and 3.

**27 Contractors undertaking police functions**

- (1) This Article applies if the Chief Officer has, following consultation with the Minister and the Police Authority, entered into an agreement with a person ('the contractor') for the provision of services relating to the detention or escort of person who have been arrested or are otherwise in custody.
- (2) The Chief Officer may designate a person who is an employee of the contractor as either or both of the following –
  - (a) a detention officer; or
  - (b) an escort officer.
- (3) A person designated under this Article shall have the powers and duties conferred or imposed on him by the designation.
- (4) The Chief Officer shall not designate a person under this Article unless the Chief Officer is satisfied that the person –
  - (a) is a suitable person to carry out the functions for the purposes of which he or she is designated;
  - (b) is capable of effectively carrying out those functions; and
  - (c) has received adequate training in the carrying out of those functions and in the exercise and performance of the powers and duties to be conferred or imposed on him or her under the designation.
- (5) The Chief Officer shall not designate a person under this Article unless the Chief Officer is satisfied that the contractor is a fit and proper person to supervise the carrying out of the functions for the purposes of which that person is designated.
- (6) Powers and duties may be conferred or imposed on a designated person by means only of the application to him or her by his or her designation of provisions of the applicable Part of Schedule 2 that are to apply to the designated person, and, for this purpose, the applicable Part of that Schedule is –
  - (a) Part 2, in the case of a person designated as a detention officer;
  - (b) Part 3, in the case of a person designated as an escort officer.
- (7) An employee of the contractor authorized or required to do anything by virtue of a designation under this Article –
  - (a) shall not be authorized or required by virtue of that designation to engage in any conduct otherwise than in the course of that employment; and
  - (b) shall be so authorized or required subject to such restrictions and conditions (if any) as may be specified in his or her designation.
- (8) Where any power exercisable by any person in reliance on his or her designation under this Article is a power which, in the case of its exercise by a police officer, includes or is supplemented by a power to use reasonable force, any person exercising that power in



reliance on that designation shall have the same entitlement as a police officer to use reasonable force.

- (9) For the purposes of the handling of complaints relating to or other instances of misconduct involving a person designated under this Article, Schedule 3 shall have effect.
- (10) A designation under this Article, unless it is previously withdrawn or ceases to have effect in accordance with paragraph (11), shall remain in force for such period as may be specified in the designation subject to renewal at any time with effect from the time when it would otherwise expire.
- (11) A designation under this Article shall cease to have effect –
  - (a) if the designated person ceases to be an employee of the contractor; or
  - (b) if the contract between the Chief Officer and the contractor is terminated or expires.
- (12) The States may by Regulations amend paragraphs (2) and (6) and, in relation to a person designated under this Article, Schedules 2 and 3.”.

**5 Article 32 amended**

In Article 32(1) of the principal Law, for the words “the Schedule” there shall be substituted the words “Schedule 1”.

**6 Numbering of existing Schedule and Schedules 2 and 3 inserted**

The existing Schedule to the principal Law shall be numbered “Schedule 1” and after that Schedule the Schedules set out in the Schedule to this Law shall be added.

**7 Police Procedures and Criminal Evidence (Jersey) Law 2003 amended**

In the Police Procedures and Criminal Evidence (Jersey) Law 2003<sup>4</sup> –

- (a) in Article 1(1) the definition “civilian support officer” shall be deleted;
- (b) in Article 50(11) the words “or by a civilian support officer” shall be deleted;
- (c) in Article 50(12), the words “or civilian support officer” shall be deleted.

**PART 4**

**ARRANGEMENTS FOR INDEPENDENT CUSTODY VISITORS**

**8 Long title of principal Law amended**

In the long title of the principal Law after the words “Jersey Police Authority” there shall be inserted the words “, the establishment of arrangements for

independent custody visiting in order to monitor the detention of persons in the custody of the police or immigration or customs officers”.

## 9 Articles 28A, 28B and 28C inserted

After Article 28 of the principal Law there shall be inserted the following cross-heading and Articles –

### *“Independent Custody Visiting*

#### **28A Arrangements for independent custody visitors**

- (1) In this Article –
  - (a) ‘detainee’ means a person who is detained in the custody of any of the following –
    - (i) the States Police Force,
    - (ii) an officer of the Impôts as referred to in the definition ‘officer’ in the Customs and Excise (Jersey) Law 1999<sup>s</sup>,
    - (iii) an immigration officer;
  - (b) ‘immigration officer’ means an officer appointed under paragraph 1 of Schedule 2 to the Immigration Act 1971, as extended to Jersey by the Immigration (Jersey) Order 1993<sup>6</sup>;
  - (c) ‘Chief Immigration Officer’ means the most senior immigration officer.
- (2) The Police Authority must –
  - (a) make arrangements for detainees to be visited by persons appointed under those arrangements (such persons to be known as ‘independent custody visitors’); and
  - (b) keep those arrangements under review and from time to time revise them as it thinks fit.
- (3) The arrangements must secure that the persons appointed under the arrangements are independent of –
  - (a) the Police Authority;
  - (b) the Chief Officer;
  - (c) the Agent of the Impôts; and
  - (d) the Chief Immigration Officer.
- (4) The arrangements must ensure that independent custody visitors can –
  - (a) access information relevant to the treatment of detainees and the conditions in which they are detained; and
  - (b) monitor the treatment of detainees and the conditions in which they are detained.
- (5) The arrangements must –

- 
- (a) authorize independent custody visitors to do anything which the Police Authority considers necessary to enable them to visit detainees and monitor the treatment of detainees and the conditions in which they are detained; and
  - (b) provide for reporting on each visit.
- (6) The arrangements may, in particular, authorize independent custody visitors to –
- (a) access, without prior notice or as otherwise determined by the arrangements, any place in which a detainee is held;
  - (b) examine records relating to the detention of persons there;
  - (c) meet any detainees there (in private) to discuss their treatment while detained and the conditions in which they are detained;
  - (d) inspect the conditions in which persons are detained there (including cell accommodation, washing and toilet facilities and facilities for the provision of food); and
  - (e) meet such other persons as the visitors think may have information relevant to the treatment of detainees and the conditions in which they are detained.
- (7) The arrangements may allow access to a detainee to be refused only if –
- (a) it appears to an officer of the rank of inspector or above (or a person of equivalent seniority if the detainee is not in the custody of the Force) that there are grounds for denying access at the time it is requested;
  - (b) the grounds are specified for the purposes of subparagraph (a) in the arrangements; and
  - (c) the procedural requirements imposed by the arrangements in relation to a denial of access are complied with.
- (8) The Police Authority must publish the arrangements it makes under this Article, including revisions to those arrangements.
- (9) Arrangements under this Article may vary between each person or body referred to in clauses (i) to (iii) of paragraph (1)(a).
- (10) Before issuing or revising any arrangements under this Article, the Police Authority must consult with –
- (a) the Minister;
  - (b) the Chief Officer;
  - (c) the Agent of the Impôts;
  - (d) the Chief Immigration Officer;
  - (e) the Police Complaints Authority; and
  - (f) any other person or body that the Police Authority thinks appropriate.

- (11) Independent custody visitors and the persons and bodies referred to in clauses (i) to (iii) of paragraph (1)(a) must comply with such arrangements published under this Article as apply to them.

### **28B SPT Visits**

- (1) In this Article –
- (a) ‘detainee’ has the meaning given by Article 28A(1)(a);
  - (b) ‘OPCAT’ means the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment adopted on 18th December 2002 at the fifty-seventh session of the General Assembly of the United Nations by resolution A/RES/57/199;
  - (c) ‘SPT’ means the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment established under Article 2 of OPCAT.
- (2) The Police Authority must make arrangements to ensure that members of the SPT may –
- (a) visit detainees;
  - (b) access information relevant to the treatment of detainees and the conditions in which they are detained; and
  - (c) monitor the treatment of detainees and the conditions in which they are detained.
- (3) The arrangements must authorize members of the SPT to do anything which the Police Authority considers necessary to enable them to visit detainees and monitor the treatment of detainees and the conditions in which they are detained.
- (4) The arrangements may, in particular, authorize members of the SPT to –
- (a) access, without prior notice or as otherwise determined under the arrangements, any place in which a detainee is held (accompanied by such experts as the SPT members think fit);
  - (b) examine records relating to the detention of persons there;
  - (c) meet any detainees there (in private) to discuss their treatment while detained and the conditions in which they are detained;
  - (d) inspect the conditions in which persons are detained there (including cell accommodation, washing and toilet facilities and facilities for the provision of food); and
  - (e) meet such other persons as the SPT members think may have information relevant to the treatment of detainees and the conditions in which they are detained.
- (5) The arrangements may allow access to a detainee to be refused only if –

- (a) there are urgent and compelling grounds of public safety, natural disaster or serious disorder in the place to be visited that temporarily prevent the carrying out of such a visit; and
  - (b) the Minister has notified the Police Authority that such grounds exist and that access should accordingly be refused.
- (6) The Police Authority must keep the arrangements it makes under this Article under review and revise them from time to time as it thinks fit.

### **28C Reports to the Minister**

- (1) The Police Authority must, no later than 31 March each year, prepare and submit to the Minister a report on the working of the arrangements which it has made under Articles 28A and 28B and the Minister must lay the report before the States Assembly at the first reasonable opportunity.
- (2) The Police Authority must prepare and provide to the Minister such other reports on matters related to the visiting of detainees as the Minister may reasonably require from time to time and may prepare and provide reports to the Minister on such matters at any time of its own motion.
- (3) In this Article ‘detainee’ has the meaning given by Article 28A(1)(a).”.

## **PART 5**

### **CLOSING**

#### **10 Citation and commencement**

This Law may be cited as the States of Jersey Police Force (Amendment No. 2) Law 201- and shall come into force 7 days after the day it is registered.

**SCHEDULE**

(Article 6)

**SCHEDULES 2 AND 3 INSERTED****“SCHEDULE 2**

(Articles 26(5) and 27(6))

**POLICE POWERS AND DUTIES OF DESIGNATED PERSONS****1 Interpretation of this Schedule**

In this Schedule –

- (a) ‘a designation’ means –
  - (i) in Part 1, a designation under Article 26, and
  - (ii) in Parts 2 and 3, a designation under Article 26 or 27, as the case may be;
- (b) words and expressions also used in the 2003 Law have the same meaning as in that Law.

**PART 1 – INVESTIGATING OFFICER****2 Entry and search after arrest**

Where a designation applies this paragraph to a person –

- (a) that person shall have the powers of a police officer under Article 20 of the 2003 Law to enter and search any premises and to seize and retain anything for which he or she may search under that Article;
- (b) Article 20(5) and (6) of the 2003 Law shall have effect in relation to any exercise by that person of those powers as if the references to a police officer in those paragraphs were references to that person;
- (c) Article 21(6) of the 2003 Law shall have effect in relation to the seizure of anything by that person by virtue of sub-paragraph (a) as it applies in relation to the seizure of anything by a police officer;
- (d) Article 22 of the 2003 Law shall have effect in relation to the power of seizure conferred on that person by virtue of sub-paragraph (a) as it applies in relation to the power of seizure conferred on a police officer by Article 20(2) of that Law;
- (e) Article 23(1) and (2) of the 2003 Law shall have effect in relation to the seizure of anything by that person in exercise of the power conferred on him or her by virtue of sub-paragraph (a) as if the references to a police officer included references to that person;

- (f) Article 23(3) to (8) and Article 24 of the 2003 Law shall have effect in relation to anything seized by that person in exercise of the power or taken away by him or her following the imposition of a requirement by virtue of sub-paragraph (d) –
  - (i) as they have effect in relation to anything seized in exercise of the power conferred on a police officer by Article 20(2) of that Law or taken away by a police officer following the imposition of a requirement by virtue of Article 22 of that Law, and
  - (ii) as if the references to a police officer in Article 23(3), (4) and (5) included references to that person.

### **3 Access to excluded and special procedure material**

Where a designation applies this paragraph to a person –

- (a) that person shall have the powers of a police officer under Article 16 of the 2003 Law to obtain access, in accordance with Schedule 2 to that Law, to excluded material or special procedure material;
- (b) Schedule 2 to the 2003 Law shall have effect for the purpose of conferring those powers on that person as if the references in paragraphs 1, 3, 4, 11 and 12 of that Schedule to a police officer were references to that person;
- (c) Article 17 of the 2003 Law shall have effect in relation to the issue of any warrant under paragraph 11 of Schedule 2 to that Law to that person as it has effect in relation to the issue of a warrant under that paragraph to a police officer;
- (d) Article 18 of the 2003 Law shall have effect in relation to any warrant to enter and search premises that is issued under paragraph 11 of Schedule 2 to that Law (whether to that person or another person) as if references in that Article to a police officer included references to that person;
- (e) Article 21(6) of the 2003 Law shall have effect in relation to the seizure of anything by that person in exercise of the power conferred on him or her by paragraph 12 of Schedule 2 to that Law as it has effect in relation to the seizure of anything under that paragraph by a police officer;
- (f) Article 22 of the 2003 Law shall have effect in relation to the power of seizure conferred on that person by paragraph 12 of Schedule 2 to that Law as it applies in relation to the power of seizure conferred on a police officer by that paragraph;
- (g) Article 23(1) and (2) of the 2003 Law shall have effect in relation to the seizure of anything by that person in exercise of the power conferred on him or her by paragraph 12 of Schedule 2 to that Law as if the references to a police officer included references to that person;

- (h) Article 23(3) to (8) and Article 24 of the 2003 Law shall have effect in relation to anything seized by that person in exercise of the power or taken away by him or her following the imposition of a requirement by virtue of sub-paragraph (f) and to anything produced to that person under paragraph 3 of Schedule 2 to that Law –
  - (i) as they have effect in relation to anything seized in exercise of the power conferred on a police officer by paragraph 12 of that Schedule or taken away by a police officer following the imposition of a requirement by virtue of Article 22 of that Law or, as the case may be, to anything produced to a police officer under paragraph 3 of that Schedule, and
  - (ii) as if the references to a police officer in Article 23(3), (4) and (5) included references to that person.

#### **4 General power of seizure**

Where a designation applies this paragraph to a person –

- (a) that person shall have the same powers as a police officer –
  - (i) under Article 21 of the 2003 Law, to seize things when lawfully on any premises, and
  - (ii) under Article 21(4) of that Law, to impose a requirement in relation to information accessible from such premises;
- (b) Article 21(6) of the 2003 Law shall have effect in relation to the seizure of anything by that person by virtue of sub-paragraph (a)(i) as it has effect in relation to the seizure of anything by a police officer;
- (c) Article 23(1) and (2) of that Law shall have effect in relation to the seizure of anything by that person in exercise of the power conferred on him or her by virtue of sub-paragraph (a)(i) as if the references to a police officer included references to that person;
- (d) Article 23(3) to (8) and Article 24 of the 2003 Law shall have effect in relation to anything seized by that person in exercise of that power or taken away by him or her following the imposition of a requirement by virtue of sub-paragraph (a)(ii) –
  - (i) as they have effect in relation to anything seized in exercise of the power conferred on a police officer by Article 21(2) or (3) of that Law or taken away by a police officer following the imposition of a requirement by virtue of Article 21(4) of that Law, and
  - (ii) as if the references to a police officer in Article 23(3), (4) and (5) included references to that person.

#### **5 Access and copying in the case of things seized by police officers**

Where a designation applies this paragraph to a person, Article 23 of the 2003 Law shall have effect in relation to anything seized by a police



officer as if the references to a police officer in Article 23(3), (4) and (5) included references to that person.

## **PART 2 – DETENTION OFFICER**

### **6 Attendance at police station for finger printing**

Where a designation applies this paragraph to a person, that person shall have the same powers as a police officer under Article 49 of the 2003 Law to require a person to attend a police station to have his or her fingerprints taken.

### **7 Non-intimate searches of detained persons**

Where a designation applies this paragraph to a person –

- (a) that person shall have the powers of a police officer under Article 50 of the 2003 Law –
  - (i) to carry out a search under that Article of any person at a police station or of any other person otherwise in police detention, and
  - (ii) to seize or retain, or cause to be seized or retained, anything found on such a search;
- (b) Article 50(9) and (12) of the 2003 Law shall apply to the exercise by that person of any power exercisable under this paragraph as they apply to the exercise of such a power by a police officer.

### **8 Intimate searches of detained persons**

Where a designation applies this paragraph to a person –

- (a) that person shall have the powers of an officer of the Force by virtue of Article 51(6) of the 2003 Law to carry out an intimate search of a person at a police station;
- (b) Article 51(7) of the 2003 Law shall apply to the exercise by that person of any power exercisable by virtue of this paragraph as it applies to the exercise of the power by an officer of the Force.

### **9 Fingerprinting without consent**

Where a designation applies this paragraph to a person –

- (a) that person shall have, at a police station the powers of a police officer below the rank of Inspector to take fingerprints without the appropriate consent under Article 55 of the 2003 Law; and
- (b) the requirement by virtue of Article 55(11)(a) of the 2003 Law that a person must be informed by an officer that his or her fingerprints may be the subject of a speculative search shall be capable of being discharged, in the case of a person at a police station, by the person being so informed by the person to whom this paragraph applies.

**10 Non-intimate samples**

Where a designation applies this paragraph to a person –

- (a) that person shall have the power of a police officer below the rank of Inspector to take a non-intimate sample under Article 57 of the 2003 Law in the case of a person in a police station without the appropriate consent;
- (b) the requirement by virtue of Article 57(9), (10), (12) and (13) to inform a person of certain matters shall be capable of being discharged, in the case of a person at a police station, by the person being informed by the person to whom this paragraph applies.

**11 Incidental powers in respect of detention**

Where a designation applies this paragraph to a person –

- (a) that person may detain another person for a period not exceeding 30 minutes to await the arrival of a police officer if –
  - (i) the designated person has reasonable grounds for suspecting that the other person has committed an offence, and
  - (ii) that other person –
    - (A) has failed to give his or her name or address when requested to do so by the designated person, or
    - (B) has given his or her name or address but the designated person has reasonable grounds for suspecting that such name or address is false or inaccurate;
- (b) that person shall remain with a police officer who arrives within 30 minutes as referred to in sub-paragraph (a) until the person who has been detained has been transferred to the control of the police officer;
- (c) if the person who may be detained by virtue of sub-paragraph (a) agrees to accompany the person to whom this paragraph applies to a police station, the person to whom this paragraph applies shall be under a duty –
  - (i) to keep that other person under control while detained at the police station or in its vicinity for as long as the person to whom this paragraph applies is responsible for him or her,
  - (ii) to assist any police officer or other authorized person to keep the person detained at the police station or in its vicinity under control, and
  - (iii) to prevent the escape of that other person from the police station or its vicinity;
- (d) that person shall be entitled to use reasonable force –
  - (i) for any of the purposes described in sub-paragraph (c),
  - (ii) for the purpose of securing, or assisting another authorized person to secure, the detention of the person who may be detained by virtue of sub-paragraph (a), or

- (iii) for the purpose of escorting that other person within a police station or assisting a police officer or other authorized person to escort such a person within a police station.

### **PART 3 – ESCORT OFFICERS**

#### **12 Power to take arrested person to a police station**

- (1) Where a designation applies this paragraph to a person –
  - (a) that person is authorized to take an arrested person to a police station under Article 28 of the 2003 Law as if the reference to a police officer taking an arrested person to a police station in Article 28(1) of that Law included a reference to that person;
  - (b) Article 28 of the 2003 Law has effect in relation to the exercise of the power conferred by sub-paragraph (a) as if the references to a person being taken to a police station by a police officer in Article 28(3) and (9) (but not Article 28(4) to (8)) included references to that person;
  - (c) that person who is taking an arrested person to a police station in exercise of the power conferred by clause (a) –
    - (i) shall be treated for all purposes as having that arrested person in his or her lawful custody,
    - (ii) shall be under a duty to keep the arrested person under control and to prevent the escape of that arrested person, and
    - (iii) shall be entitled to use reasonable force to keep that arrested person in his or her charge and under his or her control;
  - (d) that person who has taken an arrested person to a police station in exercise of the power conferred by clause (a) –
    - (i) shall be under a duty to remain at the police station until he or she has transferred control of the arrested person to the custody officer at the police station,
    - (ii) until he or she has so transferred control to the custody officer, shall be treated for all purposes as having the arrested person in his or her lawful custody,
    - (iii) for so long as that person is at the police station or in its immediate vicinity in compliance with, or having complied with, the duty under clause (i), shall be under a duty to prevent the escape of the arrested person and to assist in keeping the arrested person under control, and
    - (iv) shall be entitled to use reasonable force for the purpose of complying with the duty under clause (iii).

- (2) Without prejudice to any application of paragraph 7, where a person has another person in his or her lawful custody by virtue of sub-paragraph (1) –
  - (a) he or she shall have the same powers under Article 50(7) and (8) of the 2003 Law as a police officer has in the case of a person in police detention –
    - (i) to carry out a search of the other person, and
    - (ii) to seize or retain, or cause to be seized or retained, anything found on such a search; and
  - (b) Article 50(9) and (12) of the 2003 Law shall apply to the exercise by a person to whom this paragraph is applied of any power exercisable under this sub-paragraph as they apply to the exercise of the power by a police officer.

### **13 Escort of persons in police detention**

- (1) Where a designation applies this paragraph to any person, that person may be authorized by a custody officer to escort a person in police detention –
  - (a) from a designated police station to another designated police station; or
  - (b) from a designated police station to another place specified by the custody officer and then either back to the same or another designated police station.
- (2) A person who is escorting another person in accordance with the authorization under sub-paragraph (1) –
  - (a) shall be treated for all purposes as having that other person in his or her lawful custody;
  - (b) shall be under a duty to keep the other person under control and to prevent the escape of that other person; and
  - (c) shall be entitled to use reasonable force to keep that other person in his or her charge and under his or her control.
- (3) A person who has escorted another person to a designated police station or other place in accordance with the authorization under sub-paragraph (1) –
  - (a) shall be under a duty to remain at the designated police station or other place until he or she has transferred control of the other person to a custody officer or other responsible person there;
  - (b) until the other person has been so transferred, shall be treated for all purposes as having that person in his or her lawful custody;
  - (c) for so long as he or she is at the designated police station or other place, or in its immediate vicinity, in compliance with, or having complied with, the duty under clause (a), shall be under a duty to prevent the escape of the other person and to assist in keeping that other person under control; and

- (d) shall be entitled to use reasonable force for the purpose of complying with the duty under clause (c).
- (4) Without prejudice to any application of paragraph 7, where a person has another person in his or her lawful custody by virtue of sub-paragraph (3) –
  - (a) that person shall have the same powers under Article 50(7) and (8) of the 2003 Law as a police officer has in the case of a person in police detention –
    - (i) to carry out a search of the other person, and
    - (ii) to seize or retain, or cause to be seized or retained, anything found on such a search; and
  - (b) Article 50(9) and (12) of the 2003 Law shall apply to the exercise by that person of any power exercisable under this sub-paragraph as they apply to the exercise of the power by a police officer.

### SCHEDULE 3

(Articles 26(9) and 27(9))

## DESIGNATED PERSONS: COMPLAINTS, DISCIPLINE AND CONDUCT MATTERS

### 1 Interpretation of this Schedule

In this Schedule –

‘Law’ means the Police (Complaints and Discipline) (Jersey) Law 1999;

‘Order’ means the Police (Complaints and Discipline Procedure) (Jersey) Order 2000;

‘designated contractor’ means the employee of a contractor designated under Article 27(2);

‘designated employee’ means a States’ employee designated under Article 26(1);

‘designated person’ means a designated contractor or designated employee, as the case requires;

‘disciplinary policy’ means –

- (a) in the case of a designated employee, the disciplinary policy applicable to States’ employees other than members of the Police Force;
- (b) in the case of a designated contractor, any policy of the contractor governing the conduct (as opposed to the performance) of the designated contractor in order to determine whether a sanction or punitive measure is to be imposed against him in relation to that conduct;

‘performance policy’ means –

- (a) in the case of a designated employee –
  - (i) the capability policy applicable to States’ employees other than members of the Police Force,
  - (ii) ‘attendance policy’ means the attendance policy applicable to States’ employees other than members of the States Police Force;
- (b) in the case of a designated contractor, any policy of the contractor governing the performance of a designated contractor for the purposes of assessing whether the performance is unsatisfactory and whether, as a result, any action is to be taken in relation to it.

## 2 Modifications of the Law and Order

- (1) Subject to the modifications set out in sub-paragraphs (2) and (3), Part 2 of the Law and the relevant parts of the Order shall apply to the exercise or performance by a designated person of the powers and duties conferred or imposed on him or her by the designation as they apply to a member of the Force.
- (2) Part 2 of the Law shall be read as if –
  - (a) references to a complaint about the conduct of a member of the Force referred to conduct of the designated person in exercising or performing the powers and duties conferred or imposed on him or her by the designation;
  - (b) references to disciplinary charges in Articles 4(2), 7(3)(b) and 11(1) referred to action taken under the disciplinary policy by the employer of the designated person following resolution of the complaint under Article 7 or investigation of the complaint under the Law;
  - (c) the reference in Article 7(6) to an officer of at least the rank of the member of the Force against whom the complaint is made were to an officer who is equivalent in seniority to the designated person;
  - (d) the reference to an offence against discipline in Article 8(a) referred to conduct by the designated person that would justify action being taken under the disciplinary policy;
  - (e) the reference in Article 11(3) to a statement by the Chief Officer were to a statement by the Chief Officer stating whether he or she is of the opinion that grounds exist for the employer of the designated person to take action under the disciplinary policy or performance policy;
  - (f) the reference in Article 12(1) to a recommendation by the Authority were to a written opinion by the Authority if it takes a different view to the Chief Officer’s statement under Article 11(3) as modified; and
  - (g) Articles 12(2) to (7), 13 and 14 did not apply.
- (3) The Order shall be read as if –

- 
- (a) the references in Article 2(2) and 4(1)(b) to an offence against discipline were to conduct by the designated person that would justify action being taken under the disciplinary policy;
  - (b) the reference in Article 4(1) to suspension referred to suspension of the designation of the person under Article 26(1) or 27(2) of this Law, as the case may be;
  - (c) the references in Articles 4(2) and 4(8) to a disciplinary charge or to being charged with an offence against discipline were to action being taken under the disciplinary policy;
  - (d) the reference in Article 6(3) to an officer of at least the rank of the member of the Force concerned were to an officer who is equivalent in seniority to the designated person;
  - (e) the reference in Article 9(1) to the Chief Officer considering whether a disciplinary charge should be preferred were to the Chief Officer considering whether grounds exist for action being taken by the employer of the designated person under the disciplinary policy or performance policy, as the case may be;
  - (f) Articles 9(2) and (3) and 10 to 41 did not apply.”.

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- 1 *chapter 23.820*
  - 2 *chapter 23.750*
  - 3 *chapter 16.325*
  - 4 *chapter 23.750*
  - 5 *chapter 24.660*
  - 6 *chapter 21.700*
  - 7 *chapter 23.325*
  - 8 *chapter 23.325.50*