

**WRITTEN QUESTION TO H.M. ATTORNEY GENERAL
BY DEPUTY M.R. HIGGINS OF ST. HELIER
QUESTION SUBMITTED ON MONDAY 24th MAY 2021
ANSWER TO BE TABLED ON TUESDAY 1st JUNE 2021**

Question

Will H.M. Attorney General advise members of –

- (a) the law governing the powers of the police to enter private property, stating when such powers may or may not be exercised under the law;
- (b) what the police are, and are not, allowed to do legally upon entry into private property;
- (c) what use of force, if any, is authorised at any stage during the police's entry to, and presence in, the property;
- (d) the rights of individuals whose homes have been entered into unlawfully by the police, and the remedies available to them;
- (e) whether the police have the power to enter property in pursuance of a civil matter and, if so, in what circumstances; and
- (f) the position of individuals whose homes have been found to have been entered into by police in breach of their rights under Article 2 or Article 8 of the European Convention on Human Rights?

Answer

- (a) the law governing the powers of the police to enter private property, stating when such powers may or may not be exercised under the law;**

Part 3 of the Police Procedures and Criminal Evidence (Jersey) Law 2003 covers powers of entry, search and seizure generally. In respect of entry with a warrant, under Article 15(1), a search warrant may be issued where there are reasonable grounds for believing that a serious offence has been committed (15(1)(a)) or there are goods on premises which have been unlawfully obtained (15(1)(b)).

In respect of entry without a warrant, under Article 19(1) a police officer may enter and search any premises without a warrant for the following reasons:

- a) for the purpose of arresting a person whom the officer has reasonable cause to suspect has committed an offence, or where the officer has reasonable cause to suspect that any offence is in progress on the premises or is about to be or has been committed on the premises;
- b) where the officer has reasonable cause to suspect that any person is committing, is about to commit or has committed an offence on the premises; or
- c) for the purpose of saving life or limb or preventing serious damage to property.

There are also powers for the police to enter private property in various other laws, including Article 41 of the Proceeds of Crime Law 1999, Article 19 of the Misuse of Drugs Law 1978, Article 2 of

the Investigation of Fraud Law 1991, Article 50 of the Extradition Law. Each of these laws contain their own requirements in respect of the exercise of police powers to enter property.

(b) what the police are, and are not, allowed to do legally upon entry into private property;

Police officers must comply with the code of practice in respect of searching premises contained in [Code B](#) of the Police Procedures and Criminal Evidence (Codes of Practice) (Jersey) Order 2004.

[Article 18 of the PPCE](#) sets out the requirements for police officers to follow in executing a search warrant.

Under [paragraph 6](#) of Code B, a police officer may lawfully seize, photograph or copy anything which is covered by the warrant or which the officer has reasonable grounds for believing is evidence of an offence or has been obtained in consequence of the commission of an offence. If an officer considers information stored in any electronic form and accessible from the premises could be used in evidence, the officer may require the information to be produced in a form which can be taken away and in which it is visible and legible; or from which it can readily be produced in a visible and legible form.

(c) what use of force, if any, is authorised at any stage during the police's entry to, and presence in, the property;

Under [paragraph 1.7](#) of Code B, in all cases police officers should only use reasonable force when this is considered necessary and proportionate to the circumstances. Police officers can also use reasonable force to prevent obstruction of lawful search, including arresting the individual concerned.

(d) the rights of individuals whose homes have been entered into unlawfully by the police, and the remedies available to them;

An individual who believes that their home has been entered into unlawfully by the police can make a complaint about the officers involved. These complaints will be dealt with under the Police (Complaints and Discipline Procedure) (Jersey) Order 2000.

An individual could also bring an action for trespass to property. If successful, the individual may receive damages.

(e) whether the police have the power to enter property in pursuance of a civil matter and, if so, in what circumstances; and

In respect of civil matters, there are several laws which permit police officers to enter property.

Under [Article 20](#) of the Forfeiture of Assets (Civil Proceedings) Law 2018, warrants can be issued for the police to search private premises for the purposes of civil forfeiture investigation.

Under the Children (Jersey) Law 2002 there are the following powers to enter premises;

- [Article 41](#) – taking of children into police protection: where a police officer has reasonable cause to believe a child would otherwise be likely to suffer significant harm if not taken into police protection, the officer is authorised to remove a child for up to 72 hours, and may enter and search premises using reasonable force in order to do so if necessary.
- [Article 43](#) – powers to assist in discovery of children who may be in need of emergency protection: on making an Emergency Protection Order the Bailiff can issue a warrant authorising entry to premises by persons named in the warrant, this may include police officers.

- [Article 44 and 45](#) - recovery of abducted children: where a child who is subject to a care order, emergency protection order or police powers of protection is removed from the person authorised to care for the child a Recovery Order can be applied for. The order can include authorisation to a police officer to enter premises to search for the child, using reasonable force if necessary.
- [Article 78](#) - warrants: the Bailiff may issue a warrant authorising a police officer to enter premises using force if necessary in a range of situations including; discovery of a child in need of emergency protection, matters related to the employment of children, ascertaining the welfare of privately fostered children or children who have been placed for adoption, and matters related to the inspection of Day Care for children.

Under [Article 35](#) of the Mental Health (Jersey) Law 2016 the Bailiff may issue a warrant authorising an Authorised Officer (a Mental Health professional) to enter premises by force if necessary, to remove a person to a place of safety, where there is reasonable cause to suspect the person has a mental disorder and has been or is being ill-treated, or the person is unable to care for themselves. A police officer may accompany the Authorised Officer to give effect to the warrant.

(f) the position of individuals whose homes have been found to have been entered into by police in breach of their rights under Article 2 or Article 8 of the European Convention on Human Rights?

Any breach of an ECHR right by a public authority could found an action for breach of human rights under Article 8 of the Human Rights (Jersey) Law 2000. Such an action could result in an award of damages where the court considers it is necessary to afford just satisfaction to the person in whose favour the award is made.