

**THE STATES OF DELIBERATION**  
**of the**  
**ISLAND OF GUERNSEY**

**COMMITTEE FOR HOME AFFAIRS**

**AMENDMENTS TO THE TERRORISM AND CRIME (BAILIWICK OF GUERNSEY) LAW, 2002**

The States are asked to decide:-

Whether, after consideration of the Policy Letter entitled "Amendments to The Terrorism and Crime (Bailiwick of Guernsey) Law, 2002", dated 10<sup>th</sup> July 2020 they are of the opinion:-

1. To approve the proposals to introduce legislation amending the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 as set out in out in section 3.1 of this Policy Letter,
2. To direct the preparation of such legislation as may be necessary to give effect to the above decision.

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

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AMENDMENTS TO THE TERRORISM AND CRIME (BAILIWICK OF GUERNSEY) LAW, 2002

The Presiding Officer  
States of Guernsey  
Royal Court House  
St Peter Port

10<sup>th</sup> July 2020

Dear Sir

**1 Executive Summary**

1.1 This Policy Letter recommends amendments to the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 ("the 2002 Law") which is the main statute in the Bailiwick relating to terrorism. The proposed amendments relate to border controls which the Committee *for* Home Affairs ("the Committee") proposes are progressed for operational reasons as a priority ahead of a wider review of the Bailiwick's terrorism legislation which is currently being undertaken by the Law Officers' Chambers.

**2 Background**

2.1 In 2006<sup>1</sup> the States resolved to prepare legislation to update the 2002 Law, mainly to introduce offences consistent with those implemented in the UK by the Terrorism Act 2006 ("the 2006 Act"). Much drafting work to that end was undertaken, but before that work was finalised the UK regime was significantly modified further by the passing of the Counter-Terrorism Act 2008 ("the 2008 Act"). The 2008 Act introduced changes to the regime of the 2006 Act relating to the questioning of suspects and extra-territorial jurisdiction of courts in respect of offences committed overseas amongst other matters. The 2008 Act was swiftly followed by further significant and relevant revisions to the UK's regime, including sentencing provisions in the Coroners and Justice Act 2009, the Justice and Security Act 2013 and the Counter-Terrorism and Security Act 2015. While multiple amendments have been made to the 2002 Law over the years

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<sup>1</sup> Billet d'État XVIII of 2006, Article III <https://gov.gg/CHttpHandler.ashx?id=3817&p=0>

dealing with various matters, the 2006 resolution (which in practice has long been overtaken by legislative changes in the UK) remains outstanding.

- 2.2 In addition, there is an outstanding States resolution from 2013<sup>2</sup> mandating the preparation of legislation equivalent to the provisions of Schedule 7 of the 2008 Act relating to terrorist financing, money laundering and weapons proliferation. While the Bailiwick's regime to combat money laundering and terrorist financing regime has been amended on multiple occasions in recent years to make it consistent with relevant international standards from a criminal justice perspective, these amendments have not covered the matters identified in the 2013 resolution. Subsequent legal challenges to the implementation of the UK's legislative regime very shortly after the 2013 resolution made implementation of the resolution problematic.
- 2.3 As such, it is clear that the Bailiwick's terrorism legislation needs to be looked at in the round, and that the relevant outstanding resolutions are now out of date. To that end, a broad review of the UK's terrorism legislation, and an assessment of the provisions that might be appropriate within the context of the Bailiwick (with appropriate modifications), has been underway for some time at the Law Officer's Chambers. The Committee notes that this is a major undertaking that has to be managed with existing work pressures (especially work relating to the coronavirus pandemic at the present time); as a result of the frantic pace of legislating in the UK the legislative framework is very complex, and it is clearly important that provisions implemented here are proportionate and appropriate to the Bailiwick. In due course, this will necessitate a Policy Letter which, amongst other things, will most likely need to propose the rescission of some of the outstanding resolutions.

### **3 Requirements for an amendment Ordinance**

- 3.1 While that review is underway, consultation has taken place with Bailiwick Law Enforcement to ascertain whether there are any provisions that are needed on a more urgent basis for operational reasons. Bailiwick Law Enforcement have advised that certain provisions, mostly relating to powers at the border and reflecting powers in recent UK legislation (including the Counter-Terrorism and Border Security Act 2019), should be enacted in domestic legislation, including:-
1. new powers at the border to inspect, seize and retain travel documents;
  2. extending existing terrorism-related powers at the border - including powers to stop, question and detain people, to search persons, ships and aircraft and goods, to take copies of documents and to detain property - to their exercise in relation to the commission, preparation or instigation

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<sup>2</sup> Billet d'État XV of 2013, Article X <https://www.gov.gg/CHttpHandler.ashx?id=83312&p=0>

of "hostile acts" that do not fall within the definition of terrorism - being acts threatening national security, threatening the economic well-being of the British Islands, and acts of serious crime; and

3. supplementary updating provisions around calculating detention periods, restrictions on the use of answers to questions in evidence, searches, the supply of information and the issue of Codes of Practice.

It is proposed that these changes are enacted by way of amendment to the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002, effected by Ordinance of the States made in exercise of the power at s81A of that Law (Amendment of Law by Ordinance).

- 3.2 Bailiwick Law Enforcement have advised that, following the cases in the UK of Litvinenko and Salisbury (the Skripal case), it was identified that Counter Terrorism Border officers were engaging with many subjects potentially engaging in hostile state activity. The two suspected offenders in the Skripal case had been stopped by Counter Terrorism Border officers on their arrival in the UK and it was the landing cards that provided the forensic link to the events in Salisbury. However, the counter-terrorism legislation did not previously allow for lawful searches and interviews in such cases, due to the definition of an act of terrorism. In the Bailiwick, Law Enforcement occasionally see nationals from hostile states whose behaviour is of concern and it is the view of Bailiwick Law Enforcement that the introduction of these changes will enable them to better determine the purpose of their visit to the Bailiwick or onwards to the UK.

#### **4 Compliance with Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees**

- 4.1 Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be included in, or appended to, motions laid before the States.
- 4.2 In accordance with Rule 4(1), the Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications.
- 4.3 In accordance with Rule 4(4) of the Rules of Procedure of the States of Deliberation and their Committees, it is confirmed that the propositions above have the unanimous support of the Committee.
- 4.4 In accordance with Rule 4(5), the Propositions relate to the duties of the Committee to advise the States and to develop and implement policies on matters relating to its purpose, including law enforcement, including policing and customs.

4.5 Also in accordance with Rule 4(5), the Committee consulted with the States of Alderney, the Chief Pleas of Sark and the Policy & Resources Committee.

Yours faithfully

M M Lowe  
President

M P Leadbeater  
Vice-President

V S Oliver  
P Le Pelley  
J Smithies