



## **Attorney General's Direction 3/2019**

### **Television Licensing Enforcement in Jersey**

- 1) Without prejudice to the powers reserved to a Centenier under Article 3(2) of the Honorary Police (Jersey) Law 1974, the Attorney General is sole prosecuting authority in Jersey. Private prosecutions do not exist in Jersey.
- 2) Therefore, if a person is to be prosecuted in the Courts for an offence contrary to Section 363 of the Communications Act 2003 (as extended to Jersey) the proceedings must be brought by a Centenier on behalf of the Attorney General.
- 3) Article 4 of the Broadcasting and Communications (Jersey) Order 2004 extends sections 363, 364, 365 and 368 of the Communications Act 2003 to Jersey subject to modifications specified in Schedule 1 of the Order.
- 4) Section 363 of The Communications Act 2003 as extended to Jersey by the Broadcasting and Communications (Jersey) Order 2004 reads as follows:

#### **Section 363 Licence required for use of TV receiver**

- (1) A television receiver must not be installed or used unless the installation and use of the receiver is authorised by a licence under this Part.
- (2) A person who installs or uses a television receiver in contravention of subsection (1) is guilty of an offence.
- (3) A person with a television receiver in his possession or under his control who—
  - (a) intends to install or use it in contravention of subsection (1), or
  - (b) knows, or has reasonable grounds for believing, that another person intends to install or use it in contravention of that subsection,is guilty of an offence.
- (4) A person guilty of an offence under this section shall be liable, to a fine not exceeding level 2 on the standard scale.
- (5) Subsection (1) is not contravened by anything done in the course of the business of a dealer in television receivers solely for one or more of the following purposes—
  - (a) installing a television receiver on delivery;
  - (b) demonstrating, testing or repairing a television receiver.
- (6) The Secretary of State may by regulations exempt from the requirement of a licence under subsection (1) the installation or use of television receivers—
  - (a) of such descriptions,
  - (b) by such persons,
  - (c) in such circumstances, and

- (d) for such purposes,  
as may be provided for in the regulations.
- (7) Regulations under subsection (6) may make any exemption for which such regulations provide subject to compliance with such conditions as may be specified in the regulations.
- (8) Regulations made by the Secretary of State in the United Kingdom under section 363(6) shall not have effect in the Bailiwick of Jersey until they have been registered in the Royal Court, and where such Regulations have been so registered, they shall have effect on the day following the day of such registration or on the day of coming into force specified in the Regulations, whichever is the later

**A level 2 fine is a fine of up to £1000.**

## **Enforcement powers under the Communications Act 2003 as they apply in Jersey**

### **5) Section 366 Powers to enforce TV licensing**

- (1) If the Bailiff is satisfied by information on oath that there are reasonable grounds for believing—
  - (a) that an offence under section 363 has been or is being committed,
  - (b) that evidence of the commission of the offence is likely to be on premises specified in the information, or in a vehicle so specified, and
  - (c) that one or more of the conditions set out in subsection (3) is satisfied,he may grant a warrant under this section.
- (2) A warrant under this section is a warrant authorising any one or more persons authorised for the purpose by the BBC or by OFCOM **accompanied by a police officer**—
  - (a) to enter the premises or vehicle at any time; and
  - (b) to search the premises or vehicle and examine and test any television receiver found there.
- (3) Those conditions are—
  - (a) that there is no person entitled to grant entry to the premises or vehicle with whom it is practicable to communicate;
  - (b) that there is no person entitled to grant access to the evidence with whom it is practicable to communicate;
  - (c) that entry to the premises or vehicle will not be granted unless a warrant is produced;
  - (d) that the purpose of the search may be frustrated or seriously prejudiced unless the search is carried out by a person who secures entry immediately upon arriving at the premises or vehicle.
- (4) A person is not to enter premises or a vehicle in pursuance of a warrant under this section at any time more than one month after the day on which the warrant was granted.

- (5) The powers conferred by a warrant under this section on a person authorised by OFCOM are exercisable in relation only to a contravention or suspected contravention of a condition of a TV licence relating to interference with wireless telegraphy.
- (6) A person authorised by the BBC, or by OFCOM, to exercise a power conferred by a warrant under this section or a police officer may (if necessary) use such force as may be reasonable in the exercise of that power.
- (7) Where a person has the power by virtue of a warrant under this section to examine or test any television receiver found on any premises, or in any vehicle, it shall be the duty—
  - (a) of a person who is on the premises or in the vehicle, and
  - (b) in the case of a vehicle, of a person who has charge of it or is present when it is searched,to give the person carrying out the examination or test all such assistance as that person may reasonably require for carrying it out.
- (8) A person is guilty of an offence if he—
  - (a) intentionally obstructs a person in the exercise of any power conferred on that person by virtue of a warrant under this section; or
  - (b) without reasonable excuse, fails to give any assistance that he is under a duty to give by virtue of subsection (7).
- (9) A person guilty of an offence under subsection (8) shall be liable to a fine not exceeding level 3 on the standard scale.
- (10) In this section—
  - “interference”, in relation to wireless telegraphy, has the same meaning as in the Wireless Telegraphy Act 2006; and
  - “vehicle” includes vessel, aircraft or hovercraft.

**Therefore, unlike in England and Wales TV licencing enforcement officers can only obtain warrants to enter premises if accompanied by a police officer (which includes an officer of the Honorary Police).**

**A level 3 fine is a fine of up to £10,000.**

## **Police Procedures and Criminal Evidence (Jersey) Law**

- 6) In Jersey, a police officer (including an Honorary Police Officer) has a power of entry and search of any premises where the officer has reasonable cause to suspect that any person is committing an offence on the premises (Article 19(1)(b)).
- 7) The Police Procedures and Criminal Evidence (Relevant Offences) (Jersey) Order 2004 confirms that this applies to all offences (which for the avoidance of doubt would include an offence under section 363 of the Communications Act 2003).

## Cautions and Interviews

- 8) If a Television Licensing Enforcement Officer (TVLEO), with or without a police officer, is trying to discover whether, or by whom, an offence has been committed, they are entitled to question any person, whether suspect or not, from whom they think that useful information may be obtained. (Article 10.1 of Code C of the Police Procedures and Criminal Evidence (Codes of Practice) (Jersey) Order 2004) (“Codes”). Once the TVLEO has reasonable grounds for suspecting that a person has committed an offence they must caution that person before putting any questions or further questions relating to that offence to that person. The caution should be put in the following terms:

*“You are not obliged to say anything unless you wish to do so, but what you say may be put into writing and given in evidence.”*

It is very important that the English caution is not used. The English caution would mislead and would in all likelihood lead to the exclusion of any answer from being evidence in the case.

By way of practical example, if a TVLEO attends at premises where no TV licence is held:

TVLEO – are you Mr X?

Mr X – yes.

TVLEO – are these your premises?

Mr X – yes

TVLEO – do you have a television?

Mr X – yes

TVLEO – do you have a television licence?

Mr X - no

TVLEO – Before I ask you any further questions I must caution you *“You are not obliged to say anything unless you wish to do so, but what you say may be put into writing and given in evidence.”*

Any further questions e.g “What Channels do you normally watch?” “When did you last watch TV here?” etc..

## Article 9 Statements

- 9) Article 9 of the Criminal Justice (Evidence and Procedure) (Jersey) Law 1998 is the Jersey equivalent of section 9 of the Criminal Justice Act 1967 in England & Wales. An article 9 statement in Jersey is very similar to a section 9 statement in England & Wales.

### **Admissibility of written statements as evidence**

- (1) Where the conditions in this Article are satisfied, a written statement by any person is admissible as evidence in any criminal proceedings to the same extent as if it were oral evidence to that effect by that person.
- (2) In every case –
  - (a) the statement shall purport to be signed by the person who has made it;
  - (b) the statement shall contain a declaration by that person to the effect that it is true to the best of the person's knowledge and belief and that the person made the statement knowing that, if it were tendered in evidence, the person would be liable to prosecution if the person wilfully stated in it anything which the person knew to be false or did not believe to be true;
  - (c) before the statement is tendered in evidence, a copy shall be served, by or on behalf of the party proposing to tender it, on each of the other parties in the proceedings; and
  - (d) none of the other parties or his or her advocate, within 7 days after being served with a copy, shall have served on the party proposing to tender the statement a notice in writing that the other party objects.
- (3) Where the statement is made by a person who is under the age of 20 years, it shall give the person's age.
- (4) Where the statement is made by a person who cannot read it –
  - (a) it shall have been read to the person before he or she signs it; and
  - (b) it shall be accompanied by a declaration, by the person who read the statement to the person, that it was read to him or her before he or she signed it.
- (5) Where the statement refers to any other document as an exhibit, each copy of the statement that is served under this Article on any other party shall be accompanied by –
  - (a) a copy of the document; or
  - (b) information that will enable that party to inspect the document or a copy of it.
- (6) Notwithstanding paragraph (1), the conditions in paragraph (2)(c) and (d) shall not apply if each party agrees before or during the hearing that the statement may be tendered in evidence.

## **Costs**

- 10) Should a case proceed to the Magistrate's Court the Court has the power to order costs under:

Costs in Criminal Cases (Jersey) Law 1961

Article 2 provides where any person is prosecuted or tried before a court to which this Article applies, the court may – if the accused is convicted, order the accused to pay the whole or any part of the costs incurred in or about the prosecution and conviction.

## **File composition**

- 11) The file should contain, inter alia:

- (a) Article 9 statement(s) from the TVLEO(s) who attend the property and interviewed the Defendant.
- (b) A record of any questions asked and answered under caution.
- (c) Article 9 statements from any accompanying police officers.
- (d) An Article 9 statement from TV licensing confirming that there is no licence recorded at the relevant address.

### **Procedure for arranging a Parish Hall Enquiry**

- 12) TV Licensing should contact the Chef de Police from the relevant Parish to advise them of the offence, and provide the Chef de Police with a copy of the prosecution file and a copy of the charge.
- 13) The file should be sent to the Chef de Police using the egress file transfer platform.
- 14) The Chef de Police/duty Centenier will contact (normally in writing) the offender and notify them to attend at the Parish Hall.

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