

GUERNSEY STATUTORY INSTRUMENT

2004 NO. 25

**The Regulation of Investigatory Powers (British
Broadcasting Corporation) Regulations, 2004**

Made

Coming into operation

14th June 2004

Laid before the States

THE STATES HOME DEPARTMENT, in exercise of the powers conferred on it by sections 37 and 65 of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003¹, hereby makes the following order-

Citation, commencement and interpretation

1. (1) These Regulations may be cited as the Regulation of Investigatory Powers (British Broadcasting Corporation) Regulations, 2004.

(2) These Regulations shall come into force on 14th June, 2004.

(3) In these Regulations "the 2003 Law" means the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law 2003.

Application of Part II of the 2003 Law to the detection of television receivers

2. (1) Part II of the 2003 Law (surveillance and covert human intelligence sources) shall apply to surveillance which –

¹ Order in Council No. XXX of 2003.

- (a) is carried out by means of apparatus designed or adapted for the purpose of detecting the installation or use in any residential or other premises of a television receiver (within the meaning of section 1 of the Wireless Telegraphy Act 1949²); and
- (b) is carried out from outside those premises exclusively for that purpose,

and such surveillance is referred to in these Regulations as “the detection of television receivers”.

(2) In its application to the detection of television receivers, Part II of the 2003 Law shall have effect as if –

- (a) the following provisions are omitted-
 - (i) sections 23 to 33;
 - (ii) in section 34, subsections (2), (6) to (8) and (10), and in subsection (4) the words “Subject to subsection (6)”;
 - (iii) section 35; and section 36(2) to (5); and
- (b) the modifications set out in articles 3 to 5 are made.

² An Act of Parliament (1949 Ch54), as extended to the Bailiwick by the Wireless Telegraphy (Channel Islands) Order, 1952.

New section 22A

3. In its application to the detection of television receivers, Part II of the 2003 Law shall have effect as if the following section is inserted after section 22-

“Authorisation of detection of television receivers

22A. (1) Subject to the following provisions of this Part, the persons designated for the purposes of this section shall each have power to grant authorisations for the detection of television receivers, that is to say, surveillance which -

(a) is carried out by means of apparatus designed or adapted for the purpose of detecting the installation or use in any residential or other premises of a television receiver (within the meaning of section 1 of the Wireless Telegraphy Act 1949), and

(b) is carried out from outside those premises exclusively for that purpose.

(2) The persons designated for the purposes of this section are -

(a) any person holding the position of head of sales or head of marketing within the Television Licence Management Unit of the British Broadcasting Corporation, and

- (b) any person holding a position within that Unit which is more senior than the positions mentioned in paragraph (a).

(3) A person shall not grant an authorisation for the detection of television receivers unless he believes -

- (a) that the authorisation is necessary-
 - (i) for the purpose of preventing or detecting crime constituting an offence under section 1 or 1A of the Wireless Telegraphy Act 1949; or
 - (ii) for the purpose of assessing or collecting sums payable to the British Broadcasting Corporation under regulations made under section 2 of the Wireless Telegraphy Act 1949; and
- (b) that the authorised surveillance is proportionate to what is sought to be achieved by carrying it out.

(4) The conduct that is authorised by an authorisation for the detection of television receivers is any conduct that -

- (a) consists in the carrying out of the detection of television receivers; and
- (b) is carried out by the persons described in the authorisation in the circumstances described in the authorisation.”.

Modifications of section 34

4. In its application to the detection of television receivers, section 34 of the 2003 Law (general rules about grant, renewal and duration) shall have effect as if

- (a) in subsection (1), for paragraphs (a) and (b) there is substituted “must be in writing”;
- (b) for subsection (3) there is substituted -

“(3) Subject to subsection (4), an authorisation under this Part shall cease to have effect -

- (a) in the case of an authorisation which has not been renewed and in which is specified a period of less than eight weeks beginning with the day on which the grant of the authorisation takes effect, at the end of that period;
- (b) in the case of an authorisation which has not been renewed and to which paragraph (a) does not apply, at the end of the period of eight weeks beginning

with the day on which the grant of the authorisation takes effect;

(c) in the case of an authorisation which has been renewed, and in which is specified a period of less than eight weeks beginning with the day on which the grant of the authorisation takes effect, at the end of a period of the same length beginning with the day on which the latest renewal takes effect;

(d) in the case of an authorisation which has been renewed, and to which paragraph (c) does not apply, at the end of the period of eight weeks beginning with the day on which the latest renewal takes effect.”;

(c) for subsection (5) there is substituted –

“(5) Section 22A shall have effect in relation to the renewal of an authorisation under this Part as if references to the grant of an authorisation included references to its renewal.”; and

(d) in subsection (9) for paragraphs (a) to (c) there is substituted-

“(a) in the case of the grant of an authorisation, to the time at which or, as the case may be, day on which the authorisation is granted;

- (b) in the case of the renewal of an authorisation, to the time at which or, as the case may be, day on which the authorisation would have ceased to have effect but for the renewal.”.

Modification of section 36(1)

5. In its application to the detection of television receivers, section 36 of the 2003 Law(cancellation of authorisations) shall have effect as if -

- (a) in subsection (1) for the words from “if” to the end there is substituted “if he is satisfied that the authorisation is one in relation to which the requirements of section 22A(3)(a) and (b) are no longer satisfied”; and
- (b) after subsection (1) there is inserted -

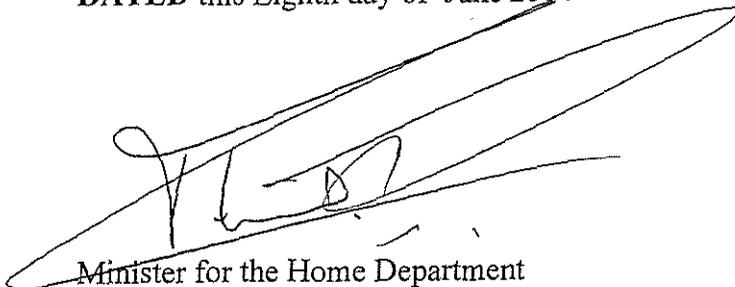
“(1A) Where any duty imposed by subsection (1) would otherwise fall on a person who is no longer available to perform it, that duty is to be performed by -

- (a) the person, if any, appointed for the purpose of this subsection in accordance with subsection (1B);
- (b) where no such person has been appointed, the person (if any) holding a position within the British Broadcasting Corporation who has taken over the responsibilities of the person who is no longer available, or most of them.

(1B) The person making an appointment for the purpose of subsection (1A), and the person appointed, must each be -

- (a) a person designated for the purposes of section 22A, or
- (b) a person holding a more senior position within the British Broadcasting Corporation than was held by the person who is no longer available.”.

DATED this Eighth day of June 2004



Minister for the Home Department

For and on behalf of the Department

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations apply Part II of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003, with modifications, to the carrying out of surveillance to detect whether a television receiver is being used in any residential or other premises (referred to in the Regulations as “the detection of television receivers”).

Part II of the 2003 Law provides for the grant of authorisations for certain forms of surveillance. By virtue of section 21(6), the detection of television receivers is not one of the kinds of surveillance regulated by Part II. However, section 37 provides for that Part to be applied, or applied with modifications, to surveillance not otherwise covered. These Regulations are made under that section, and provides for authorisations to be granted for the detection of television receivers under a modified version of Part II. Authorisations may cover such detection in any part of the Bailiwick.

Article 2 modifies Part II by providing that certain of its provisions are not to apply to the detection of television receivers. Article 3 modifies Part II so that it has effect in relation to such detection as if the “section 22A” set out in that article were inserted in that Part. “Section 22A” provides for authorisations to be granted by persons holding certain positions within the BBC, if they are satisfied that the authorisation is necessary for preventing or detecting certain offences under section 1 or 1A of the Wireless Telegraphy Act 1949, or for assessing or collecting sums payable in respect of television licences. Article 4 modifies the general rules in section 34 about the grant, renewal and duration of authorisations and provides (in particular) that authorisations for the detection of television receivers are to last for up to eight weeks. Article 5 modifies the duty imposed by section 36 to cancel an authorisation where the requirements that were necessary for its grant or renewal no longer apply.