

STATES OF JERSEY



DRAFT REGULATION OF INVESTIGATORY POWERS (BRITISH BROADCASTING CORPORATION) (JERSEY) REGULATIONS 200

**Lodged au Greffe on 16th April 2008
by the Minister for Home Affairs**

STATES GREFFE



Jersey

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REPORT

1. These Regulations would modify the application of Part 3 of the Regulation of Investigatory Powers (Jersey) Law 2005 (“the 2005 Law”) with respect to the use of devices for the detection of the existence of television receivers on premises in Jersey by, or on behalf of, the BBC, for licence fee enforcement purposes.
2. Similar provision has been made in the United Kingdom (and in Guernsey) under equivalent legislation.
3. Part 3 of the 2005 Law makes provision for the grant of authorizations for (*inter alia*) directed surveillance.
4. By virtue of Article 32(5) of the 2005 Law, the detection of television receivers is not subject to regulation under Part 3 of the Law. However, Article 42 of the 2005 Law provides for that Part to be applied, or applied with modifications, to types of surveillance which are not otherwise covered.
5. These Regulations, made pursuant to Article 42, would require authorizations to be obtained for the detection of television receivers under a modified version of Part 3 of the 2005 Law, from the BBC officials mentioned in the new Article 33A of the 2005 Law as it would be inserted by Regulation 3(b).
6. The grants of authorization for this purpose will be subject to the scrutiny of the Investigatory Powers Commissioner under Part 4 of the 2005 Law.
7. The purpose of the 2005 Law is to place surveillance by the police and other public bodies under proper statutory control in accordance with the Human Rights (Jersey) Law 2000. If television licensing detection activities might interfere with the rights protected by Article 8 of the European Convention on Human Rights, such interference could be justified in terms of Article 8(2), for example, for the prevention of crime as licence evasion is a criminal offence. However, Article 8(2) also requires an activity to be in accordance with the Law. The Regulations will fulfil that requirement.
8. Part 3 of the 2005 Law as modified by the Regulations, would provide for authorizations to be granted in relation to the detection of television receivers only by persons holding senior positions in the BBC licence fee unit. They must be satisfied that an authorization is necessary for preventing or detecting offences under the Communications Act 2003 (as extended to Jersey).
9. As with other authorizations under the Law, the person issuing the authorization must be satisfied that the surveillance authorized is proportionate to what is sought to be achieved by carrying it out.
10. It should be noted that any such authorized surveillance will only be carried out from outside the premises concerned; and an authorization may only last for a maximum of 8 weeks.
11. In addition to the oversight of the use of these powers by the Investigatory Powers Commissioner, anyone affected by an authorization has a right to seek redress before the Investigatory Powers Tribunal under Article 46 of the 2005 Law.
12. The Regulations would, therefore, extend the ambit of the 2005 Law so that this form of surveillance will be subject to the same sort of legal authorization process as other types of surveillance.

Financial and manpower implications

13. There will be no significant financial or manpower implications for the States from the enactment of these Regulations, though there will be a small increase in the area of responsibility of the Interception

Commissioner. The cost of obtaining an authorization will be born by the BBC.

Explanatory Note

These Regulations would apply Part 3 of the Regulation of Investigatory Powers (Jersey) Law 2005, with modifications, to the detection of television receivers. Part 3 of the Law regulates, amongst other activities directed surveillance.

Regulation 1 is the interpretation provision

Regulation 2 applies Part 3 of the Law to the use of equipment outside of premises, to detect the installation or use of a television receiver in those premises.

Regulation 3 modifies Part 3 of the Law as applied by Regulation 2. For the purposes of the application of the Law to the use of television receiver detection equipment, the Law is modified so as to omit the general provisions for authorization of directed surveillance, covert human intelligence sources and intrusive surveillance (Articles 34 to 39).

In their place, the Law is modified so as to insert a new Article 33A. This Article specifies who may authorize the detection of television receivers. The detection must be carried out outside of premises. The Article further specifies that an authorization may only be granted if necessary to prevent or detect commission of the offence of installing or using a television receiver without a licence or for the purpose of assessing or collecting a licence fee.

The Law is also modified so as to substitute 2 Articles for the purposes of the Law as applied by Regulation 2. Article 40 is substituted so as to make provision as to the duration of an authorization and to permit its renewal. Article 41 is substituted so as to impose a duty to cancel an authorization if it is no longer necessary to prevent or detect the commission of the offence described above or to assess or collect a licence fee. The substituted Article 41 further identifies the person who is required to discharge the duty to cancel in the event that the person on whom the duty otherwise falls is no longer able to perform it.

Regulation 4 provides for the citation of the Regulations and for their commencement 7 days after they are made.



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Arrangement

Regulation

- 1 [Interpretation](#)
- 2 [Application of Part 3 of the Law to the detection of television receivers](#)
- 3 [Modification of Part 3 of the Law when applied to the detection of television receivers](#)
- 4 [Citation and commencement](#)



Jersey

DRAFT REGULATION OF INVESTIGATORY POWERS (BRITISH BROADCASTING CORPORATION) (JERSEY) REGULATIONS 200

Made

[date to be inserted]

Coming into force

[date to be inserted]

THE STATES, in pursuance of Article 42 of the Regulation of Investigatory Powers (Jersey) Law 2005^[1], have made the following Regulations –

1 Interpretation

In these Regulations –

“the detection of television receivers” means the surveillance described in Regulation 2;

“Law” means the Regulation of Investigatory Powers (Jersey) Law 2005^[2].

2 Application of Part 3 of the Law to the detection of television receivers

Part 3 of the Law shall apply to 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 368 of the Communications Act 2003 as extended to Jersey by the Broadcasting and Communications (Jersey) Order 2004^[3]; and
- (b) is carried out from outside those premises exclusively for that purpose.

3 Modification of Part 3 of the Law when applied to the detection of television receivers

In its application to the detection of television receivers, Part 3 of the Law shall have effect with the following modifications –

- (a) the omission of Articles 34 to 39;
- (b) the insertion after Article 33 of the following Article –

“33A Authorization of detection of television receivers

- (1) Subject to the following provisions of this Part, the persons designated for the purposes of this Article shall each have power to grant authorizations 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 368 of the 2003 Act); and

- (b) is carried out from outside those premises exclusively for that purpose.
- (2) The persons designated for the purposes of this Article 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 sub-paragraph (a).
- (3) A person shall not grant an authorization for the detection of television receivers unless he or she believes –
 - (a) that the authorization is necessary –
 - (i) for the purpose of preventing or detecting crime constituting an offence under section 363 of the 2003 Act, or
 - (ii) for the purpose of assessing or collecting sums payable to the British Broadcasting Corporation under regulations made under section 365 of the 2003 Act; and
 - (b) that the authorized surveillance is proportionate to what is sought to be achieved by carrying it out.
- (4) The conduct that is authorized by an authorization 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 authorization in the circumstances described in the authorization.
- (5) In this Article “2003 Act” means the Communications Act 2003 as extended to Jersey by the Broadcasting and Communications (Jersey) Order 2004.”;
- (c) the substitution for Article 40 of the following Article –

“40 General rules for grant, renewal and duration of authorizations of detection of television receivers

- (1) An authorization under this Part must be in writing.
- (2) Subject to paragraph (3), an authorization under this Part shall cease to have effect-
 - (a) in the case of an authorization which has not been renewed and in which is specified a period of less than 8 weeks beginning with the day on which the grant of the authorization takes effect, at the end of that period;
 - (b) in the case of an authorization which has not been renewed and to which sub-paragraph (a) does not apply, at the end of the period of 8 weeks beginning with the day on which the grant of the authorization takes effect;
 - (c) in the case of an authorization which has been renewed, and in which, when granted, a period of less than 8 weeks beginning with the day on which the grant of the authorization takes effect was specified, 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 authorization which has been renewed, and to which sub-paragraph (c) does not apply, at the end of the period of 8 weeks beginning with the day on which the latest renewal takes effect.
- (3) An authorization under this Part may be renewed, at any time before the time at which it ceases to have effect, by the person who would be entitled to grant a new authorization in the same terms.

- (4) Article 33A shall have effect in relation to the renewal of an authorization under this Part as if references to the grant of an authorization included references to its renewal.
 - (5) References in this Article to the time at which, or the day on which, the grant or renewal of an authorization takes effect are references –
 - (a) in the case of the grant of an authorization, to the time at which or, as the case may be, day on which the authorization is granted;
 - (b) in the case of the renewal of an authorization, to the time at which or, as the case may be, day on which the authorization would have ceased to have effect but for the renewal.”;
- (d) the substitution for Article 41 of the following Article –

“41 Cancellation of authorizations of detection of television receivers

- (1) The person who granted or, as the case may be, last renewed an authorization under this Part shall cancel it if he or she is satisfied that the authorization is one in relation to which the requirements of Article 33A(3)(a) and (b) are no longer satisfied.
- (2) Where any duty imposed by paragraph (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 paragraph in accordance with paragraph (3);
 - (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.
- (3) The person making an appointment for the purposes of paragraph (2), and the person appointed, must each be –
 - (a) a person designated for the purposes of Article 33A; 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.”.

4 Citation and commencement

These Regulations may be cited as the Regulation of Investigatory Powers (British Broadcasting Corporation) (Jersey) Regulations 200- and shall come into force 7 days after they are made.

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- [1] *chapter 08.830*
- [2] *chapter 08.830*
- [3] *chapter 06.110*