

Draft Order laid before Parliament under section 47(2) of the Regulation of Investigatory Powers Act 2000 for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2001 No.

INVESTIGATORY POWERS

**Regulation of Investigatory Powers (British
Broadcasting Corporation) Order 2001**

Made - - - - 2001
Coming into force - - 2001

The Secretary of State, in exercise of the powers conferred on him by section 47(1) of the Regulation of Investigatory Powers Act 2000(1), hereby makes the following Order, of which a draft has, in accordance with section 47(2) of that Act, been laid before and approved by resolution of each House of Parliament:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Regulation of Investigatory Powers (British Broadcasting Corporation) Order 2001.

(2) This Order shall come into force on the day after the day on which it is made.

(3) In this Order “the 2000 Act” means the Regulation of Investigatory Powers Act 2000.

Application of Part II of the 2000 Act to the detection of television receivers

2.—(1) Part II of the 2000 Act (surveillance and covert human intelligence sources) 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 1 of the Wireless Telegraphy Act 1949(2)), and

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

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

(2) In its application to the detection of television receivers, Part II of the 2000 Act shall have effect as if—

(1) 2000 c. 23.

(2) 1949 c. 54. Relevant amendments were made by section 180(1) of, and paragraph 1 of Part I of Schedule 18 to, the Broadcasting Act 1990.

- (a) the following provisions were omitted, namely, sections 28 to 42, in section 43, subsections (2), (6) to (8) and (10) and in subsection (4) the words “Subject to subsection (6)”, section 44, section 45(2) to (7) and section 46, and
- (b) the modifications set out in articles 3 to 5 were made.

New section 27A

3. In its application to the detection of television receivers, Part II of the 2000 Act shall have effect as if the following section were inserted after section 27—

“Authorisation of detection of television receivers

27A.—(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(3)), 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(4) 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(5); 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.”.

(3) 1949 c. 54. Relevant amendments were made by section 180(1) of, and paragraph 1 of Part I of Schedule 18 to, the Broadcasting Act 1990.

(4) 1949 c. 54. Section 1A was inserted by section 168 of the Broadcasting Act 1990.

(5) 1949 c. 54. Relevant amendments were made by section 7 of, and paragraph 1 of Schedule 1 to, the Wireless Telegraphy Act 1998; section 180(1) of, and paragraph 2 of Part I of Schedule 18 to, the Broadcasting Act 1990; article 3 of, and Schedule 2 to, the Transfer of Functions (Local Government, etc) (Northern Ireland) Order 1973 (SR & O (NI) 1973/256); section 3(1) of the Post Office Act 1969 and the Ministry of Posts and Telecommunications (Dissolution) Order 1974 (S.I.1974/691).

Modifications of section 43

4. In its application to the detection of television receivers, section 43 of the 2000 Act (general rules about grant, renewal and duration) shall have effect as if—

- (a) in subsection (1), for paragraphs (a) and (b) there were substituted “must be in writing”;
- (b) for subsection (3) there were 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 were substituted—
 - “(5) Section 27A 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.”;
- (d) in subsection (9) for paragraphs (a) to (c) there were 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 45(1)

5. In its application to the detection of television receivers, section 45 of the 2000 Act (cancellation of authorisations) shall have effect as if—

- (a) in subsection (1) for the words from “if” to the end there were substituted “if he is satisfied that the authorisation is one in relation to which the requirements of section 27A(3)(a) and (b) are no longer satisfied”; and
- (b) after subsection (1) there were 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 27A, 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.”.

Home Office
2001

Minister of State

EXPLANATORY NOTE

(This note is not part of the Order)

This Order applies Part II of the Regulation of Investigatory Powers Act 2000, 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 Order as “the detection of television receivers”).

Part II of the 2000 Act provides for the grant of authorisations for certain forms of surveillance. By virtue of section 26(6), the detection of television receivers is not one of the kinds of surveillance regulated by Part II. However, section 47 provides for that Part to be applied, or applied with modifications, to surveillance not otherwise covered. This Order is 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 United Kingdom.

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 27A” set out in that article were inserted in that Part. “Section 27A” 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 1948, or for assessing or collecting sums payable in respect of television licences. Article 4 modifies the general rules in section 43 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 45 to cancel an authorisation where the requirements that were necessary for its grant or renewal no longer apply.