

**BBC Policy on the Authorisation and Operation of Detection Equipment under  
the Regulation of Investigatory Powers Act 2000**

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## **A. Purpose**

- 1 The purpose of this policy is to set out the process involved in granting, renewing and cancelling authorisations under the Regulation of Investigatory Powers Act 2000 (the Act) and the Regulation of Investigatory Powers (British Broadcasting Corporation) Order 2001 (SI 1057) (the Order) as relevant to the use of detection equipment in relation to television receivers.
- 2 Authorisations relate to the detection of television receivers which is surveillance that:
  - (i) 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 (s27A(1) of the Act as inserted by article 2 of the Order); and
  - (ii) is carried out from outside those premises exclusively for that purpose (section 27A(1) of the Act as inserted by article 2 of the Order).
- 3 The conduct that is authorised by an authorisation for the detection of television receivers is any conduct that:
  - (i) consists of the carrying out of the detection of television receivers; and
  - (ii) is carried out by the persons described in the authorisation in the circumstances described in the authorisation (s27A of the Act as inserted by article 3 of the Order).
- 4 Authorisation procedures will be consistent with the relevant parts of the Home Office Code of Practice on Covert Surveillance.

## **B. Relevant parties**

- 1 Under the Service Provision Agreement of 7<sup>th</sup> February 2002, Capita Business Services Ltd (“Capita”) is the service provider authorised to operate detection equipment.

## **C. Policy**

### **1. Authorisation granting process**

- 1.1 The authorisation granting process is as follows:
  - No detection will be carried out unless it is covered by a current authorisation.

- The BBC requires that Capita provide a satisfactorily completed authorisation request form and relevant underlying information as set out in section 6.2 on record keeping below and that all relevant information supporting the BBC's assessment should be accurate and up-to-date.
- The request form must set out details of the premises or postcode area and the ground or grounds as to why the application is believed to be necessary and proportionate (as set out in section 3 below).
- Capita should present authorisation requests to the BBC a minimum of 4 working days prior to when the authorisation is needed to be effective. The authorisation comes into effect as soon as it is signed.

## **2. Granting of Authorisations**

- 2.1 The granting of Authorisations must be carried out in accordance with s27A of the Act (as inserted by the article 3 of the Order).<sup>1</sup> In all cases, authorisations should be given sufficient consideration and there should be evidence of this consideration.
- 2.2 The Order states that anyone performing the role of Head of Sales or Head of Marketing within the Television Licensing Revenue Management Unit (TV Licensing Management Team, TVLMT) or anyone more senior in TVLMT can grant an authorisation (s27A (2)). In practice this is limited to the Head of Revenue Management and the Head of Sales and Marketing as the position fulfilling the roles with power to grant authorisations in accordance with the Order.<sup>2</sup>

## **3. Relevant considerations for granting and renewing authorisations**

- 3.1 A person shall not grant an authorisation for detection unless he or she believes that:
- (i) the authorisation is necessary for the purposes of preventing or detecting crime constituting a television licensing offence or assessing or collecting sums payable to the BBC pursuant to Part 4 of the Communications Act 2003; and
  - (ii) the conduct that is authorised is proportionate to what is sought to be achieved by carrying it out (s27A (3)(a)&(b) of the Act as inserted by article 3 of the Order).
- 3.2 The necessity and proportionality test must be satisfied before an authorisation can be granted.

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<sup>1</sup> Note that section 27A covers who can grant an authorisation, what an authorisation can cover and requires that detection is necessary and proportionate. Compliance with this policy will ensure compliance with section 27A.

<sup>2</sup> Note that as the roles of head of sales and head of marketing are currently combined there are two rather than three people who can grant authorisations.

## The necessity and proportionality test

- 3.3 The authoriser must believe that the detection activities are necessary and proportionate. This involves balancing the intrusiveness of detection at the property (the invasion of privacy of the occupants and anyone else who may be affected) against the need for the activity in operational terms. The activity will be neither necessary nor proportionate if the information could have been obtained by other less intrusive means. All detection activity should be carefully managed to meet the objective of ascertaining if a television receiver is being used to receive television programmes and must not be arbitrary or unfair.
- 3.4 The below outlines the necessity and proportionality test. This is reproduced as a flow chart at Appendix A.
- 3.5 If there has been a previous detection, the results of this Redacted under section 31 ("law enforcement") of the Freedom of Information Act should be taken into account when determining a subsequent attempt is proportionate.
- 3.6 For the use of detection to be necessary and proportionate:
- A. In all cases, the premises must be unlicensed; AND one of the conditions in section B must also be met.
- B.1 Redacted under section 31 ("law enforcement") of the Freedom of Information Act
- B.2 Redacted under section 31 ("law enforcement") of the Freedom of Information Act
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- B.4.4 Redacted under section 31 ("law enforcement") of the Freedom of Information Act

B.4.5 Redacted under section 31 (“law enforcement”) of the Freedom of Information Act

- 3.7 Any other factors relevant to the case at hand should also be taken into account when considering whether detection will be necessary and proportionate. These factors should be included in the authorisation form (see ‘Record Keeping’ below).
4. Redacted under section 31 (“law enforcement”) of the Freedom of Information Act

Redacted under section 31 (“law enforcement”) of the Freedom of Information Act

## 5. Renewal, Review, Expiry and Cancellation of Authorisations

### Renewal

- 5.1 An authorisation may be renewed at any time before the time at which it ceases to have effect, by any person who would be entitled to grant a new authorisation in the same terms (i.e. to renew an authorisation, you must have the power to have granted a new authorisation on the same terms) (s43 (4) of the Act).
- 5.2 The same factors that must be considered when granting an authorisation must also be considered when renewing an authorisation (s 43(5) of the Act as modified by article 4 of the Order states that section 27A of the Act (as inserted by 4 of the Order) applies to renewals as well as the initial granting of an authorisation).
- 5.3 In addition, when renewing an authorisation, the following factors must be included as part of that decision making process:
- the use made of detection equipment in the period since the grant or last renewal of the authorisation; and
  - the tasks given to the detector van equipment during that period and the information obtained from the conduct or use of the detector van operator (s43(4)(6)&(7) of the Act).
- 5.4 In practice, we will consider the above to be satisfied if the results of the detection were used for the purposes of preventing or detecting crime constituting a television licensing offence or assessing or collecting sums payable to the BBC pursuant to Part 4 of the Communications Act. This shows that our use of detection results is relevant to necessity and proportionality.

### Review

- 5.5 Authorisations should be subject to ongoing review and should be cancelled as appropriate. Redacted under section 31 ("law enforcement") of the Freedom of Information Act

## Expiry

- 5.6 All authorisations automatically lapse at the end of their specified period and a maximum period of 8 weeks is legally allowed (s43 of the Act as modified by article 4 of the Order). All authorisations will be for a period of 8 weeks.

## Cancellation

- 5.7 Section 45(1) of the Act as modified by article 5 of the Order applies in relation to cancellation of authorisations.

- 5.8 This process requires that the person who granted or last renewed an authorisation shall cancel it if the authorisation is one that no longer meets the requirements of the necessity and proportionality test.

- 5.9 Once the detection has been carried out, all authorisations should be cancelled (except those coming to a natural end due to the 8 week period ending) so that record exists of the practical duration of the authorisation, particularly in relation to specific detection.

- 5.10 The BBC requires that Capita will relay to the BBC Field Operations Manager any instances where the basis on which an authorisation has been granted is no longer in existence as soon as it becomes aware of them. The Field Operations Manager will then inform the person who granted that authorisation.

- 5.11 All authorisations should be cancelled in certain circumstances including but not limited to:

(i) Redacted under section 31 ("law enforcement") of the Freedom of Information Act

(ii) where the work is completed more than 5 days before the end of the authorised period;

(iii) Redacted under section 31 ("law enforcement") of the Freedom of Information Act

(iv) Redacted under section 31 ("law enforcement") of the Freedom of Information Act

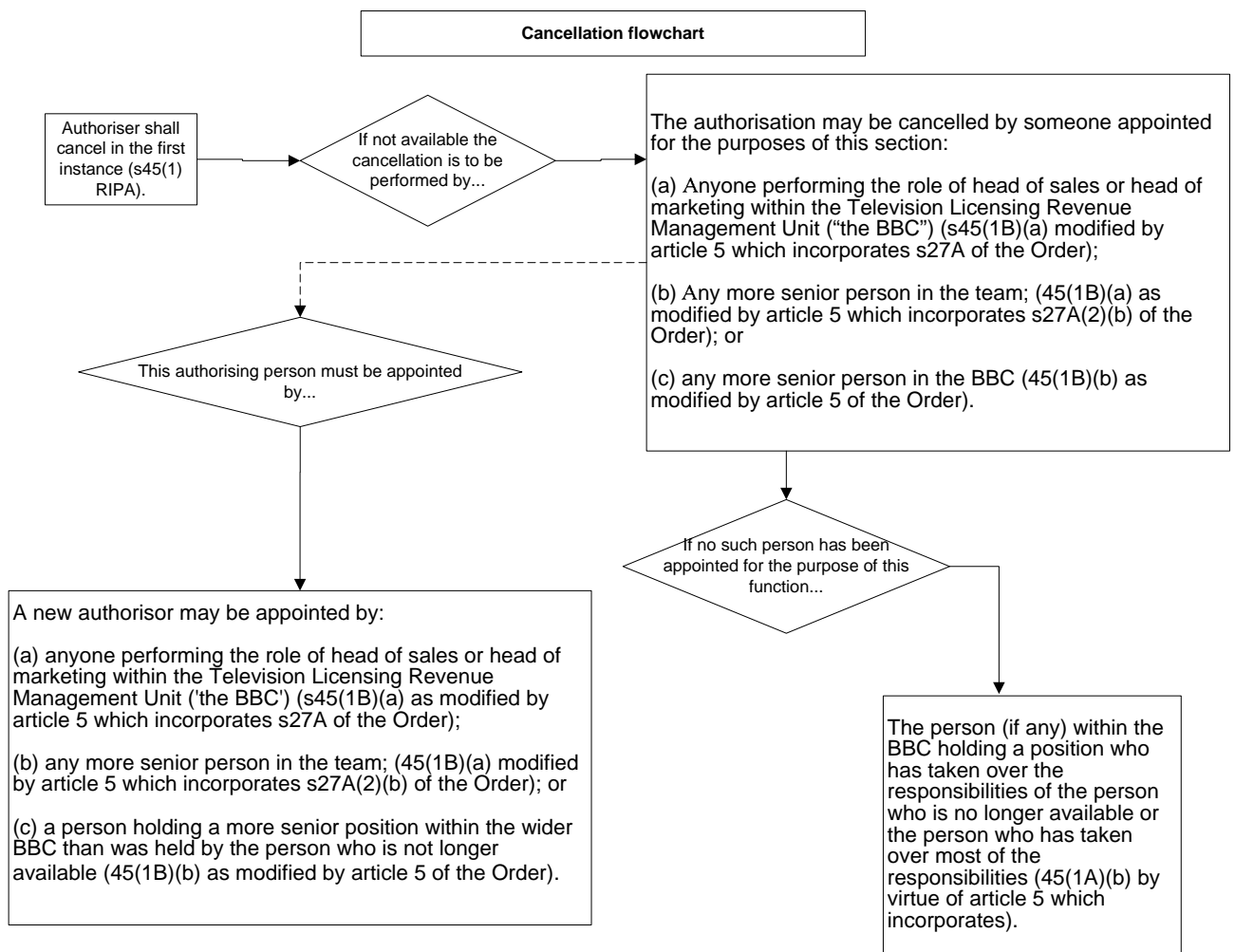
(v) where all target premises within the authorisation have become licensed;

(vi) where information becomes available that an offence may no longer be being committed;

(vii) where there is a material risk of collateral intrusion; or

(viii) the authorisation ceases to be necessary or proportionate for any reason.

- 5.12 The below flowchart outlines the cancellation process:



5.13 Where this is the case the BBC will assess whether there is a person within the BBC who has taken over that person’s responsibilities and if not, ensure that a replacement will be appointed in their place (such an appointment to comply with article 5 of the Order) (s45(1) and as modified by article 5 of the Order).

## 6. Administrative requirements

6.1 An authorisation must be in writing (s43 of the Act as modified by article 4 of the Order).

6.2 Redacted under section 31 (“law enforcement”) of the Freedom of Information Act

## Operation of detection equipment

6.3 The operation of detection equipment will be carried out as follows:

- Detection will be carried out in accordance with the authorisation.
- The BBC requires that the operation of detection equipment will be conducted in accordance with Capita's work instructions relating to detection equipment (as approved by the BBC) to ensure that all the relevant legal and policy requirements are upheld.
- Detection may only be carried out from outside any residential or other premises to detect installation or use of a television receiver (article 2 of the Order).<sup>3</sup>
- Redacted under section 31 ("law enforcement") of the Freedom of Information Act<sup>4</sup>
- Only employees who are authorised in accordance with the Service Provision Agreement and who have been signed off as fully trained by the Detection Equipment Manager may operate detection equipment. That training is to be updated at least every 2 years or more often in case of changes to technology, law or policy.
- An audit of each party's records will be carried out by the relevant legal teams at least once a year.
- Any sensitivities in a particular local community will be taken into account.
- The relevant police force for the area that detection is to be carried out will be notified before detection takes place.
- The detection operator should also take into account the risk of intrusion into the privacy of persons other than those who are directly the subjects of the investigation (ie collateral intrusion).<sup>5</sup> Whether detection will impact on investigations by any other public bodies should also be taken into account.
- Every authorised employee must have signed a declaration relating to privacy and confidentiality of any information gained whilst carrying out detection before they undertake detection.

### Record Keeping

6.4 The BBC requires that a central record is to be kept within the BBC offices of:

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<sup>3</sup> Pursuant to s48 of RIPA, a 'residential premises' does not include 'any common area to which [the resident] has or is allowed access in connection with [their] use or occupation'. Detection may therefore be conducted from common areas (e.g. landings, stairs).

<sup>4</sup> Redacted under section 31 ("law enforcement") of the Freedom of Information Act

<sup>5</sup> Note that this is taken from the Home Office Code of Practice.

- (i) authorisations which have been granted (and any corresponding renewals or cancellations);
  - (ii) authorisations which have been rejected; and
  - (iii) any corresponding background information relating to decisions taken.
- 6.5 Capita must keep its own records of applications submitted and related information.
- 6.6 Records should be kept for a minimum period of 6 years. Personal data collected must be processed in accordance with the Data Protection Act 1998, Human Rights Act 1998 and data protection policies, procedures and standards of the BBC.
- 6.7 The BBC requires that the following supporting documentation must be kept to enable justification (where necessary):
- (i) A cancellation of authorisation form whenever used;
  - (ii) Customer letters or any other correspondence relevant to the proportionality test; and
  - (iii) Any other relevant documentation.

#### Monitoring

- 6.8 The BBC requires that analysis of the operation of detection (its appropriateness/the results etc) is to be undertaken by Capita whilst an authorisation is active. Any issues, are to be relayed to the Field Operations Manager who will discuss with the authorising officer the ongoing validity of the authorisation and who will decide if the authorisation needs to be cancelled (see 'Cancellation of Authorisations' above).

#### Results of detection

- 6.9 Results of detection will be used to confirm that someone does not use television, where this is appropriate, or to inform our next steps in relation to enforcement (Redacted under section 31 ("law enforcement") of the Freedom of Information Act)
- 6.10 The final results of detection undertaken under an authorisation will be reported to the Field Operations Manager who will analyse the results in conjunction with the Head of Sales and Marketing.

#### Complaints

- 6.11 Enquiries by the Investigatory Powers Tribunal or a Surveillance Commissioner (from the Office of the Surveillance Commissioner) regarding an authorisation granted or detection exercised will be passed to the person

carrying out the role of the Head of Revenue Management, or if absent, the person carrying out the role of Head of Sales and Marketing. The Field Operations Manager should also be informed.

- 6.12 Representations made directly to the BBC or its sub-contractors regarding the use of detection are to be passed to the person carrying out the role of the Head of Revenue Management, or if absent, the person carrying out the role of Head of Sales and Marketing.

## **Appendix A – flow chart of necessity and proportionality test**

Redacted under section 31 (“law enforcement”) of the Freedom of Information Act