

REPUBLIC OF SOUTH AFRICA

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# INTERCEPTION AND MONITORING BILL

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*(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill  
published in Government Gazette No 22582 of 17 August 2001)  
(The English text is the official text of the Bill)*

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(MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

[B 50—2001]

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**GENERAL EXPLANATORY NOTE:**

[                    ]     Words in bold type in square brackets indicate omissions from existing enactments.

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## **BILL**

**To regulate the interception and monitoring of certain communications; to provide for the interception of postal articles and communications and for the monitoring of communications in the case of a serious offence or if the security or other compelling national interests of the Republic are threatened; to prohibit the provision of certain telecommunication services which do not have the capacity to be monitored; to regulate authorised telecommunications monitoring; and to provide for matters connected therewith.**

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

**Definitions**

- 1.** In this Act, unless the context otherwise indicates—
- “Agency” means the Agency as defined in section 1 of the Intelligence Services Act; 5
  - “call-related information” includes switching, dialling or signalling information that identifies the origin, destination, termination, duration and equipment identification of each communication generated or received by a customer or user of any equipment, facility or service provided by a service provider and, where applicable, the location of the user within the telecommunications system; 10
  - “communication” includes a conversation or a message, and any part of a conversation or message, whether—
    - (a) in the form of— 15
      - (i) speech, music or other sounds;
      - (ii) data;
      - (iii) text;
      - (iv) visual images, whether animated or not; or
      - (v) signals; or
    - (b) in any other form or in any combination of forms; 20  - “customer” means—
    - (a) any person who or any body or organisation which has entered into a contract with a service provider for the provision of a telecommunication service to that person, body or organisation; or

- (b) any person to whom or any body or organisation to which a service provider provides a pre-paid telecommunication service;
- “Defence Act” means the Defence Act, 1957 (Act No. 44 of 1957);
- “Defence Force” means the defence force referred to in section 199(2) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996); 5
- “direction”, except in section 10(2), means a direction referred to in section 4(1);
- “Directorate” means the Directorate of Special Operations referred to in section 1 of the National Prosecuting Authority Act;
- “Intelligence Services Act” means the Intelligence Services Act, 1994 (Act No. 38 of 1994); 10
- “judge” means any judge of a High Court discharged from active service under section 3 of the Judges’ Remuneration and Conditions of Employment Act, 1989 (Act No. 88 of 1989), and any retired judge, who is designated by the Cabinet member responsible for the administration of justice to perform the functions of a judge for the purposes of this Act; 15
- “monitor” includes the recording of communications by means of a monitoring device;
- “monitoring device” means any instrument, device or equipment which is used or can be used, whether by itself or in combination with any other instrument, device or equipment, to listen to or record any communication; 20
- “National Prosecuting Authority Act” means the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998);
- “Police Service” means the South African Police Service established by section 5(1) of the South African Police Service Act;
- “postal article” means any letter, post-card, reply post-card, lettercard, newspaper, book, packet, pattern or sample packet or any parcel or other article while in transit by post, and includes a telegram when conveyed by post; 25
- “pre-paid telecommunication service” means a mobile cellular telecommunication service in respect of which—
- (a) a service provider provides the service to a customer without the customer concerned having to enter into a contract with the service provider for the provision of that service to the customer; 30
- (b) the customer pays for the provision of the service before it is used; and
- (c) no other person, body or organisation, including another service provider, gives the customer an account for the provision of the service after it has been used; 35
- “serious offence” means—
- (a) any offence mentioned in Schedule 1 to the Criminal Procedure Act, 1977 (Act No. 51 of 1977), provided that— 40
- (i) that offence is allegedly being or has allegedly been committed on an organised, planned or premeditated basis by the persons involved therein; or
- (ii) that offence is allegedly being or has allegedly been committed on a regular basis by the person or persons involved therein; or
- (iii) that offence may cause harm to the economy or other compelling national interests of the Republic; or 45
- (b) any offence referred to in sections 13(f) and 14(b) of the Drugs and Drug Trafficking Act, 1992 (Act No. 140 of 1992); or
- (c) any specified offence as defined in section 1 of the National Prosecuting Authority Act; or 50
- (d) any offence relating to the dealing in or smuggling of firearms, ammunition, explosives or armament; or
- (e) any offence relating to the death of, or infliction of grievous bodily harm to, any person; or
- (f) any offence referred to in the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998); or 55
- (g) any offence threatening the security or other compelling national interests of the Republic,

including any conspiracy, incitement or attempt to commit any of the above-mentioned offences;

“Service” means the Service as defined in section 1 of the Intelligence Services Act;

“service provider” means any person who or body or organisation which provides a telecommunication service under and in accordance with a telecommunication service licence issued to such person, body or organisation in terms of Chapter V of the Telecommunications Act, and, for the purposes of—

(a) sections 6, 14(2) and 15(2)(a), includes any person, body or organisation responsible for the dispatching of a postal article or the transmission of a communication over a telecommunications system or for the provision of a postal service; and

(b) sections 6, 14(2) and 15(2)(a), includes any person, body or organisation providing a local access telecommunication service, public pay-telephone service, value-added network service or private telecommunication network contemplated in sections 39, 40 and 41 of the Telecommunications Act;

“South African Police Service Act” means the South African Police Service Act, 1995 (Act No. 68 of 1995);

“Telecommunications Act” means the Telecommunications Act, 1996 (Act No. 103 of 1996);

“telecommunication service” means any telecommunication service as defined in the Telecommunications Act, in respect of—

(a) a public switched telecommunication service;

(b) a mobile cellular telecommunication service;

(c) a national long-distance telecommunication service;

(d) an international telecommunication service; or

(e) any other telecommunication service licensed or deemed to be licensed or exempted from being licensed as such in terms of the Telecommunications Act;

“telecommunications system” means any system or series of telecommunication facilities or radio, optical or other electromagnetic apparatus or any similar technical system used for the purpose of telecommunication, whether or not such telecommunication is subject to rearrangement, composition or other processes by any means in the course of their transmission or emission or reception;

“telegram” means any communication in written form or information in the form of an image transmitted over a telecommunications system and delivered in any such form, or intended to be thus transmitted and delivered, or delivered from any post office as defined in the Post Office Act, 1958 (Act No. 44 of 1958), or intended to be thus delivered as a communication or as information transmitted either wholly or in part over a telecommunications system.

## **Interception and monitoring**

2. (1) Subject to subsections (2) and (3) and section 4, no person may—

(a) intentionally and without the knowledge or permission of the dispatcher intercept a communication which has been or is being or is intended to be transmitted by telephone or in any other manner over a telecommunications system; or

(b) intentionally monitor any communication by means of a monitoring device so as to gather confidential information concerning any person, body or organisation.

(2) Any person may monitor any communication by means of a monitoring device where—

(a) such person is a party to that communication; or

(b) one of the parties to the communication has consented to such monitoring.

(3) Any person who is a party to a communication may, in the course of the carrying on of any business and without the knowledge or permission of the other party to that communication—

- (a) intercept the communication which has been or is being or is intended to be transmitted by telephone or in any other manner over a telecommunications system; or
- (b) monitor the communication by means of a monitoring device, for the purpose of monitoring or keeping a record of communications— 5
  - (i) in respect of transactions entered into in the course of that business; or
  - (ii) relating to that business.

**Application for direction**

3. (1) An application for purposes of section 4(2) or (4), must be made by—
- (a) an officer referred to in section 33 of the South African Police Service Act, if the officer concerned obtained the approval in advance of another officer in the Police Service with at least the rank of assistant-commissioner, or a member of the Police Service occupying a post on at least the same level, and who has been authorised in writing by the National Commissioner of the Police Service to grant such approval; 10 15
  - (b) an officer as defined in section 1 of the Defence Act, if the officer concerned obtained the approval in advance of another officer in the Defence Force with at least the rank of major-general who must be authorised in writing by the Chief of the Defence Force to grant such approval;
  - (c) a member as defined in section 1 of the Intelligence Services Act, if the member concerned obtained the approval in advance of another member of the Agency or the Service, as the case may be, holding a post of at least general manager; 20
  - (d) the head of the Directorate, or by an Investigating Director authorised in writing by the head of the Directorate to make such an application. 25
- (2) Subject to section 12(2), an application referred to in subsection (1) must—
- (a) be in writing;
  - (b) contain full particulars of all the facts and circumstances alleged by the officer or member concerned in support of his or her application; and
  - (c) comply with the directives referred to in section 12(1). 30

**Issue of direction**

4. (1) Notwithstanding section 2(1) or anything to the contrary in any other law contained, but subject to subsection (2), a judge may, upon an application referred to in section 3, direct that—
- (a) (i) a postal article; or 35
    - (ii) a communication which has been or is being or is intended to be transmitted by telephone or in any other manner over a telecommunications system, be intercepted;
  - (b) communications to or from a person, body or organisation, whether a telecommunications system is being used in conducting or transmitting those communications or not, be monitored in any manner by means of a monitoring device. 40
- (2) A direction may only be issued if the judge concerned is satisfied, on the facts alleged in an application referred to in section 3, that there are reasonable grounds to believe that— 45
- (a) a serious offence has been or is being or will probably be committed and cannot be investigated in another appropriate manner; or
  - (b) the security or other compelling national interests of the Republic are threatened or that the gathering of information concerning a threat to the security or other compelling national interests of the Republic is necessary. 50
- (3) A direction may be issued for a period not exceeding three months at a time, and the period for which it has been issued must be mentioned in the direction.

- (4) Any judge may upon an application—
- (a) extend the period referred to in subsection (3) for a further period not exceeding three months at a time; or
  - (b) amend an existing direction,
- if the extension or amendment, as the case may be, is necessary for a reason mentioned in subsection (2). 5
- (5) An application referred to in subsection (2) or (4) must be heard and a direction issued without any notice to the person, body or organisation to which the application applies and without hearing such person, body or organisation.
- (6) An application referred to in subsection (2) or (4) may also be granted if an investigation referred to in subsection (2)(a) may disclose information that may help to prevent the commission of a serious offence. 10

### **Execution of direction**

5. (1) If a direction has been issued in terms of section 4, any member of the Police Service or a member, excluding a member of a visiting force, as defined in section 1 of the Defence Act, a member of the Agency or the Service or a member of the Directorate, or any other person may execute that direction or assist with the execution of the direction concerned, if the member or person concerned has been authorised by the officer or member who made the application in terms of section 3(1) to execute that direction or to assist with the execution of the direction. 15 20
- (2) A member or other person who executes a direction or assists with the execution of a direction may take possession of and examine any postal article or telegram to which the direction applies, or, as the case may be, listen in to or make a recording of any communication to which the direction applies.
- (3) The officer or member who granted the authorisation referred to in subsection (1), may authorise such number of members or other persons to assist with the execution of the direction as he or she deems necessary. 25
- (4) A member or other person who executes a direction or assists with the execution of a direction may at any time enter or board any premises, vehicle, vessel or aircraft in order to install, maintain or remove a monitoring device, or to intercept or take into possession a postal article, or to intercept any communication, or to install, maintain or remove a device by means of which any communication can be intercepted, for the purposes of this Act. 30

### **Assistance at execution of direction by service providers**

6. (1) If a direction or a copy thereof is handed to the service provider to whom or which the direction is addressed by a member or other person who executes that direction or assists with the execution of that direction, the service provider concerned must as soon as possible— 35
- (a) intercept the postal article or telegram concerned or all postal articles or telegrams to which the direction applies and hand it to a member or other person who is authorised in terms of section 5(1) to execute the direction concerned or to assist with the execution thereof; 40
  - (b) make available the necessary facilities and devices to enable the member or other person who is authorised in terms of section 5(1) to execute a direction or to assist with the execution of a direction, to effect the necessary connections in order to monitor communications to which the direction applies. 45
- (2) If a service provider, for the purposes mentioned in—
- (a) subsection (1)(b), has made a facility, device or telecommunications system available; 50
  - (b) section 8(3), has routed duplicate signals; or
  - (c) sections 9(1) and 10(1) or (2), has provided or routed call-related information,
- the remuneration agreed upon by the service provider and the National Commissioner of the Police Service, the Chief of the Defence Force, the Director-General of the Agency or the Service or the head of the Directorate, as the case may be, must be paid to that service provider. 55

(3) If an agreement is not reached in terms of subsection (2), the Minister of Communications, with the concurrence of the Minister of Finance, must determine a reasonable remuneration in order to compensate a service provider at least for any costs incurred as a result of any direction handed to the service provider concerned in terms of this Act. 5

(4) The remuneration referred to in subsections (2) and (3) is only in respect of direct costs incurred in respect of personnel and administration and the lease of telecommunications systems, where applicable, and may not include the costs of acquiring the facilities and devices referred to in section 7(2).

#### **Prohibition of certain telecommunication services** 10

7. (1) Notwithstanding any other law, no service provider may provide any telecommunication service which does not have the capacity to be monitored: Provided that a service provider providing such a service is only responsible for decrypting any communication encrypted by a customer if the facility for encryption was provided by the service provider concerned. 15

(2) A service provider must at own cost and within the period, if any, specified by the Minister of Communications in a directive referred to in subsection (4)(a), acquire the necessary facilities and devices to enable the monitoring of communications in terms of this Act.

(3) The investment, technical, maintenance and operating costs in enabling a telecommunication service to be monitored, must be carried by the service provider providing such a service. 20

(4) The Minister of Communications, after consultation with the service provider concerned, may from time to time—

(a) issue a directive determining the manner in which effect is to be given to subsection (1); and 25

(b) determine a period, which may not be less than three months from the date on which a directive referred to in paragraph (a) is issued, for compliance with such a directive, and if such a period is determined, it must be mentioned in the directive concerned. 30

(5) A directive referred to in subsection (4)(a) may include specifications relating to—

(a) the security, technical and functional requirements of the facilities and devices to be acquired in terms of subsection (2);

(b) the capacity needed for interception purposes; 35

(c) the systems to be used;

(d) the connectivity with central monitoring centres referred to in section 8;

(e) the manner of routing duplicate signals of communications to designated central monitoring centres in terms of section 8(3); or

(f) the manner of routing call-related information to designated central monitoring centres in terms of sections 9(4) and 10(1) or (2). 40

#### **Central monitoring centres**

8. (1) (a) The Police Service, the Defence Force, the Agency, the Service and the Directorate must, at State expense, establish, equip, operate and maintain central monitoring centres for the authorised monitoring of communications in terms of this Act. 45

(b) An agreement on the sharing of a central monitoring centre referred to in paragraph (a), including the cost thereof, may be concluded.

(2) The National Commissioner of the Police Service, the Chief of the Defence Force, the Directors-General of the Agency and Service and the head of the Directorate, respectively, must designate specific central monitoring centres established in terms of subsection (1) for purposes of giving effect to subsection (3) and sections 9(4)(a) and 10(1)(b)(i) and (2)(a)(i). 50

(3) Duplicate signals of communications authorised to be monitored in terms of this Act, must be routed by the service provider concerned to the designated central monitoring centre concerned.

### **Request for provision of call-related information**

**9.** (1) If, in a specific case, only call-related information without the actual monitoring of a communication is required— 5

- (a) an officer of at least the rank of assistant-commissioner in the Police Service or a member of the Police Service occupying a post on at least the same level;
- (b) an officer of at least the rank of major-general in the Defence Force;
- (c) a member of the Agency or the Service holding a post of at least general manager; or 10
- (d) the head of the Directorate or an Investigating Director of the Directorate, may in writing request the service provider concerned to provide call-related information in respect of the customer concerned.

(2) A request referred to in subsection (1) may only be made if there are reasonable grounds to believe that the gathering of call-related information is necessary in an investigation relating to— 15

- (a) the commission or alleged commission of a serious offence; or
- (b) a threat or alleged threat to the security or other compelling national interests of the Republic. 20

(3) A request referred to in subsection (1) must—

- (a) contain particulars of the call-related information which is required;
- (b) indicate whether the call-related information must be—
  - (i) routed to a central monitoring centre and, if so, must specify the designated central monitoring centre; or 25
  - (ii) provided to the Police Service, the Defence Force, the Agency, the Service or the Directorate, whichever is applicable; and
- (c) specify the period for which, and the form in which, the provision of the call-related information is required.

(4) Any service provider who or which receives a request referred to in subsection (1) must as soon as possible after such receipt— 30

- (a) route the call-related information specified in the request concerned to the designated central monitoring centre concerned; or
- (b) provide the call-related information specified in the request concerned to the Police Service, the Defence Force, the Agency, the Service or the Directorate, whichever is applicable, in the form as requested. 35

### **Direction for provision of call-related information**

**10.** (1) (a) Notwithstanding the fact that a direction has been issued in terms of section 4, a judge may, upon an application, issue a supplementary direction in which the service provider concerned is directed to provide call-related information, on an ongoing basis for a specified period, as it becomes available. 40

(b) A service provider to whom or which a supplementary direction referred to in paragraph (a) is addressed, must, in respect of all communications which are monitored in terms of this Act—

- (i) route the call-related information specified in the supplementary direction concerned to the designated central monitoring centre concerned; or 45
- (ii) provide the call-related information specified in the supplementary direction concerned to the Police Service, the Defence Force, the Agency, the Service or the Directorate, whichever is applicable.

(c) Sections 3 and 4(3), 4(4), 4(5) and 4(6) apply with the necessary changes in respect of an application for, and the issuing of, a supplementary direction referred to in paragraph (a): Provided that a supplementary direction expires when the period or extended period for which the direction concerned has been issued, lapses. 50



- (2) (a) Notwithstanding the fact that no direction has been issued in terms of section 4 in a specific case, a judge may upon an application, if only call-related information on an ongoing basis without the actual monitoring of a communication is required, direct that the service provider concerned must—
- (i) route the call-related information specified in the direction concerned to the designated central monitoring centre concerned; or 5
  - (ii) provide the call-related information specified in the direction concerned to the Police Service, the Defence Force, the Agency, the Service or the Directorate, whichever is applicable.
- (b) A direction referred to in paragraph (a) may only be issued by a judge if he or she is satisfied, on the facts alleged in the application, that there are reasonable grounds to believe that the gathering of call-related information is necessary in an investigation relating to—
- (i) the commission or alleged commission of a serious offence; or 10
  - (ii) a threat or alleged threat to the security or other compelling national interests of the Republic. 15
- (c) Sections 3 and 4(3), 4(4), 4(5) and 4(6) apply with the necessary changes in respect of an application for, and the issuing of, a direction referred to in paragraph (a).
- (3) The availability of the above procedures in respect of the provision of call-related information does not preclude obtaining such information in respect of any person, body or organisation in accordance with a procedure prescribed in any other Act: Provided that any such information which is obtained in terms of such Act may not be obtained on an ongoing basis. 20

#### **Information to be obtained and kept by service provider**

- 11.** (1) A service provider must— 25
- (a) before he, she or it enters into a contract with any person, for the provision of a telecommunication service to such person—
    - (i) in the case of a natural person, require from such person his or her full names, residential, business or postal address and identity number; or
    - (ii) in the case of a corporation or any other organisation, require from such corporation or organisation its business name and address and, if registered as such in terms of any law, its registration number; and
    - (iii) any such other information as the service provider deems necessary; and
  - (b) ensure that proper records of—
    - (i) the information referred to in paragraph (a) and, where applicable, any change in such information which is brought to the attention of the service provider; and 30
    - (ii) the number allocated to the person, are kept. 35
- (2) A service provider must provide the Police Service, the Defence Force, the Agency, the Service or the Directorate with such information regarding a customer, as may be required by an officer or member referred to in section 3(1)(a), (b), (c) or (d), to perform the functions and exercise the powers authorised by law. 40
- (3) The obligation in terms of subsection (2) includes the provision of the information referred to in subsection (1)(a) in respect of a person— 45
- (a) with whom the service provider concerned has entered into a contract for the provision of a telecommunication service; or
  - (b) to whom a pre-paid telecommunication service is provided, if such information is available.

#### **Directives regarding applications** 50

- 12.** (1) The respective Judges-President of the High Courts may jointly issue directives in which the manner and procedure of applications in terms of sections 3(1) and 4(4) are uniformly regulated.

(2) (a) If a judge considers any case to be sufficiently urgent, the procedure contemplated in subsection (1) may be dispensed with and the matter may be dealt with in such manner and subject to such conditions as he or she deems fit, including, in an appropriate case, the hearing of an oral application and the granting of an oral direction.

(b) An oral direction referred to in paragraph (a) must be confirmed in writing within 48 hours. 5

### Use of information in criminal proceedings

**13.** (1) The use of any information obtained by the application of this Act, or any similar Act in another country, as evidence in any prosecution, is subject to the decision of the head of the Directorate, the Director of Public Prosecutions or an Investigating Director contemplated in the National Prosecuting Authority Act. 10

(2) Information regarding the commission of any criminal offence, obtained by means of any interception or monitoring in terms of this Act, or any similar Act in another country, may be admissible as evidence in criminal proceedings.

### Secrecy 15

**14.** (1) No person who is or was concerned in the performance of any function in terms of this Act, may disclose any information which he or she obtained in the performance of such a function except—

- (a) to any other person who of necessity requires it for the performance of his or her functions in terms of this Act; 20
- (b) if he or she is a person who of necessity supplies it in the performance of his or her functions in terms of this Act;
- (c) information which is required in terms of any law or as evidence in any court of law; or
- (d) to any competent authority which requires it for the institution, or an investigation with a view to the institution, of any criminal prosecution. 25

(2) No employee of a service provider may disclose any information which he or she obtained in the course of his or her employment and which is connected with the performance of any function in terms of this Act, whether that employee is involved in the performance of that function or not, except for the purposes mentioned in subsection (1). 30

### Offences and penalties

**15.** (1) A person who contravenes section 2(1) or 14 is guilty of an offence and liable on conviction, in the case of a contravention of—

- (a) section 2(1), to a fine or to imprisonment for a period not exceeding two years; 35
- or
- (b) section 14, to a fine or to imprisonment for a period not exceeding five years.

(2) Any service provider who or which—

- (a) fails or refuses to comply with, or to assist with the execution of, a direction issued in terms of section 4 or 10(2) or a supplementary direction issued in terms of section 10(1); 40
- (b) fails or refuses to comply with a directive issued in terms of section 7(4);
- (c) contravenes section 7(1), 8(3) or 11(2); or
- (d) contravenes section 11(1),

is guilty of an offence and liable on conviction, in the case of a conviction of an offence referred to in— 45

- (i) paragraph (a), (b) or (c), to a fine not exceeding R1 000 000 and to a further fine not exceeding R50 000 for every day during which such failure, refusal or contravention continues; or
- (ii) paragraph (d), to a fine not exceeding R200 000. 50

(3) Notwithstanding anything to the contrary in any other law contained, a magistrate's court may impose any penalty provided for in this Act.

- (4) No person who—
- (a) in good faith assists another person with the execution of a direction; and
  - (b) believes on reasonable grounds that such other person is acting in accordance with such a direction,

is liable to prosecution for a contravention of section 2(1).

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#### **Revoking of licence to provide telecommunication service**

16. The Minister of Communications may, in the case of a second or subsequent conviction of an offence referred to in section 15(2)(b) and notwithstanding the imposition of any penalty prescribed by section 15(2), revoke the licence issued to the service provider concerned in terms of Chapter V of the Telecommunications Act, to provide a telecommunication service.

#### **Amendment of section 205 of Act 51 of 1977, as substituted by section 11 of Act 204 of 1993**

17. Section 205 of the Criminal Procedure Act, 1977, is hereby amended by the substitution for subsection (1) of the following subsection:

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“(1) A judge of **[the supreme court]** a High Court, a regional court magistrate or a magistrate may, subject to the provisions of subsection (4), and section 10(3) of the Interception and Monitoring Act, 2001, upon the request of **[an attorney-general]** a Director of Public Prosecutions or a public prosecutor authorized thereto in writing by the **[attorney-general]** Director of Public Prosecutions, require the attendance before him or her or any other judge, regional court magistrate or magistrate, for examination by the **[attorney-general]** Director of Public Prosecutions or the public prosecutor authorized thereto in writing by the **[attorney-general]** Director of Public Prosecutions, of any person who is likely to give material or relevant information as to any alleged offence, whether or not it is known by whom the offence was committed: Provided that if such person furnishes that information to the satisfaction of the **[attorney-general]** Director of Public Prosecutions or public prosecutor concerned prior to the date on which he or she is required to appear before a judge, regional court magistrate or magistrate, he or she shall be under no further obligation to appear before a judge, regional court magistrate or magistrate.”.

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#### **Amendment of section 11 of Act 140 of 1992**

18. Section 11 of the Drugs and Drug Trafficking Act, 1992, is hereby amended by the substitution in subsection (1) for paragraph (e) of the following paragraph:

“(e) subject to section 10(3) of the Interception and Monitoring Act, 2001, require from any person who has in his or her possession or custody or under his or her control any register, record or other document which in the opinion of the police official may have a bearing on any offence or alleged offence under this Act, to deliver to him or her then and there, or to submit to him or her at such time and place as may be determined by the police official, any such register, record or document;”.

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#### **Amendment of section 5 of Act 38 of 1994, as amended by section 5 of Act 66 of 2000**

19. Section 5 of the Intelligence Services Act, 1994, is hereby amended—

- (a) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

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“If a judge as defined in section 1 of the Interception and Monitoring **[Prohibition]** Act, **[1992 (Act No. 127 of 1992)]** 2001, is **[convinced]** satisfied, on the **[grounds mentioned]** facts alleged in a written application complying with directives issued under subsection (7), that there are reasonable grounds to believe that—”;

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- (b) by the substitution in subsection (3) for paragraph (a) of the following paragraph:

- “(a) A direction referred to in subsection (2) shall be issued by the judge concerned for a specific period not exceeding three months at a time, and the period for which it has been issued shall be mentioned in the direction.”;
- (c) by the substitution for subsection (4) of the following subsection: 5  
 “(4) The judge referred to in subsection (2) may, upon a written application complying with the directives issued under subsection (7)—  
 (a) extend the period referred to in subsection (3) for a further period not exceeding three months at a time; or  
 (b) amend an existing direction referred to in subsection (3), 10  
 if that judge is **[convicted]** satisfied that the extension or amendment, as the case may be, is necessary for a reason mentioned in subsection (2).”;
- and
- (d) by the substitution for subsection (7) of the following subsection: 15  
 “(7) (a) The Judges-President of the **[several Divisions of the Supreme Court of South Africa]** High Courts may jointly issue directives to uniformly regulate the manner and procedure of applications in terms of subsection (2).  
 (b) If the judge referred to in subsection (2) considers any case to be sufficiently urgent, the procedure contemplated in paragraph (a) may be dispensed with and the matter may be dealt with in such manner and subject to such conditions as he or she deems fit, including, in an appropriate case, the hearing of an oral application and the granting of an oral direction. 20  
 (c) An oral direction referred to in paragraph (b) must be confirmed in writing within 48 hours.” 25

**Amendment of section 3 of Act 40 of 1994, as amended by section 3 of Act 31 of 1995 and section 3 of Act 42 of 1999**

20. Section 3 of the Intelligence Services Control Act, 1994, is hereby amended by the substitution in paragraph (a) for subparagraph (iii) of the following subparagraph: 30  
 “(iii) any judge as defined in section 1 of the Interception and Monitoring **[Prohibition]** Act, **[1992 (Act No. 127 of 1992)]** 2001, a report regarding the functions performed by him or her in terms of that Act, including statistics regarding such functions, together with any comments or recommendations which such judge may deem appropriate: Provided that such report shall not 35  
 disclose any information contained in an application or direction **[contemplated in section 3 of]** referred to in that Act;”.

**Repeal of law and transitional arrangements**

21. (1) Subject to subsections (2) and (3), the Interception and Monitoring Prohibition Act, 1992 (Act No. 127 of 1992), is hereby repealed. 40  
 (2) Any judge whose designation in terms of the Interception and Monitoring Prohibition Act, 1992, to perform the functions of a judge for the purposes of that Act was still in force immediately before the commencement of this Act, must be regarded as having been so designated in terms of this Act.  
 (3) A direction issued under section 3 of the Interception and Monitoring Prohibition Act, 1992, and which is still in force immediately before the commencement of this Act, must be regarded as having been issued under this Act and remains in force until the period or extended period for which that direction has been issued, lapses. 45  
 (4) Any information which, before the commencement of this Act, has been obtained as contemplated in section 2(2) or (3), is admissible as evidence in any criminal proceedings as if those provisions were in operation at the date of obtaining such information. 50

**Short title and commencement**

22. This Act is called the Interception and Monitoring Act, 2001, and comes into operation on a date fixed by the President by proclamation in the *Gazette*. 55

## **MEMORANDUM ON THE OBJECTS OF THE INTERCEPTION AND MONITORING BILL, 2001**

### **1. BACKGROUND**

Since the Interception and Monitoring Prohibition Act, 1992 (Act No. 127 of 1992), came into operation on 1 February 1993, there have been considerable technological advances in respect of telecommunications such as cellular, satellite and computer communications through e-mail and the electronic transfer of information and data. There have also been considerable legal developments throughout the world regarding the interception and monitoring of communications. Furthermore, telecommunications are being used increasingly in the organisation and commission of especially organised crime, heists and other serious violent crimes.

### **2. OBJECTS OF BILL**

The South African Law Commission, as part of its review of security legislation (Project 105), investigated the subject of the Interception and Monitoring Prohibition Act, 1992 (Act No. 127 of 1992). In its Report on the investigation, the Law Commission proposed certain amendments to the Interception and Monitoring Prohibition Act, 1992 (hereinafter referred to as the "existing Act"). In view of the number and extent of those amendments, the main object of the Bill is to replace the existing Act with a new substantive Act which incorporates the Law Commission's recommendations. Consequently the Bill comprises most of the provisions of the existing Act (either in an amended or unamended form) as well as numerous new provisions which are aimed at regulating the interception and monitoring of cellular communications.

### **3. CONSULTATION PROCESS**

The availability of discussion paper 78, which contained provisional recommendations and a draft Bill, was announced at a media conference, as well as on the Law Commission's Website on the Internet, in a Bulletin issued by the Law Commission dated 2 December 1998 and in the *Government Gazette*. The discussion paper was also distributed to approximately 400 local parties and bodies (including Government Departments, law enforcement agencies, telecommunication service providers, individuals and bodies representing the legal community) and to 250 foreign parties and bodies.

### **4. FINANCIAL IMPLICATIONS FOR STATE**

While every effort will be made to use existing resources to implement and apply the legislation, there will be financial implications for the State if the legislation is to be implemented successfully, for example the establishment, equipping, operating and maintenance of central monitoring centres and the remuneration payable to service providers for routing duplicate signals or call-related information to central monitoring centres.

### **5. IMPLICATION FOR PROVINCES**

None.

### **6. PARLIAMENTARY PROCEDURE**

The State Law Advisers and the Department of Justice and Constitutional Development are of the opinion that this Bill must be dealt with in accordance with section 75 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.





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