

## **SOUTH AFRICA**

### **INTERCEPTION AND MONITORING PROHIBITION ACT**

#### **NO. 127 OF 1992**

[ASSENTED TO 2 JULY, 1992][DATE OF  
COMMENCEMENT: 1 FEBRUARY, 1993]

(Afrikaans text signed by the State President)

as amended by

Intelligence Services Act, No. 38 of 1994

Interception and Monitoring Prohibition Amendment Act, No.  
77 of 1995

Justice Laws Rationalisation Act, No. 18 of 1996

#### **GENERAL NOTE**

In terms of s. 4 of Act No. 18 of 1996, the expressions –

South African Police,

Commissioner of the South African Police

and

South African Defence Force, wherever they occur, are substituted by the expressions ©South African Police Service, National Commissioner of the South African Police Service and South African National Defence Force, respectively.

#### **ACT**

To prohibit the interception of certain communications and the monitoring of certain conversations; to provide for the interception of postal articles and communications and for the monitoring of conversations in the case of a serious offence or if the security of the Republic is threatened; and to provide for matters connected therewith.

##### **1. Definitions.**

In this Act, unless the context otherwise indicates

“Agency” means the Agency as defined in section 1 of the Intelligence Services Act, 1994;

Definition of Agency inserted by s. 32 of Act No. 38 of 1994.]

“division” a provincial or local division of the Supreme Court of South Africa;

“judge” means any judge of any provincial or local division of the Supreme Court of South Africa including any judge 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 Minister of Justice to perform the functions of a judge within a particular division for the purposes of this Act;

Definition of “judge” substituted by s. 1 of Act No. 77 of 1995.]

“monitor” includes the recording of conversations 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 conversation;

“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;

“serious offence” means

(a) any offence mentioned in Schedule 1 to the Criminal Procedure Act, 1977 (Act No. 51 of 1977), including any conspiracy, incitement or attempt to commit any offence

referred to in that Schedule, provided that-

(i) that offence is allegedly being or has allegedly been committed over a lengthy period of time;

(ii) that offence is allegedly being or has allegedly been committed on an organized basis by the persons involved therein;

(iii) that offence is allegedly being or has allegedly been committed on a regular basis by the person or persons involved therein; or

(iv) that offence may allegedly harm the economy of the Republic; or

(b)any offence referred to in sections 13 (f) and 14 (b) of the Drugs and Drug Trafficking Act, 1992;

“Service” means the Service as defined in section 1 of the Intelligence Services Act, 1994;

[Definition of “Service” inserted by s. 32 of Act No. 38 of 1994.]

“telecommunications line” includes any apparatus, instrument, pole, mast, wire, pipe, pneumatic or other tube, thing or means which is or may be used for or in connection with the sending, conveying, transmitting or receiving of signs, signals, sounds, communications or other information;

“telegram” means any communication in written form or information in the form of an image transmitted over a communications line 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 line.

## 2. Prohibition on interception and monitoring. (1) No person shall

(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 line; or

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

(2) Notwithstanding the provisions of subsection (1) or anything to the contrary in any other law contained, a judge may direct that-

(a)a particular postal article or a particular communication which has been or is being or is intended to be transmitted by telephone or in any other manner over a telecommunications line be intercepted;

(b)all postal articles to or from a person, body or organization or all communications which have been or are being or are intended to be

transmitted by telephone or in any other manner over a telecommunications line, to or from a person, body or organization be intercepted; or

(c) conversations by or with a person, body or organization, whether a telecommunications line is being used in conducting those conversations or not, be monitored in any manner by means of a monitoring device.

3. Issue of direction. (1) A direction referred to in section 2 (2) may only be issued by a judge-

(a) designated by the Minister of Justice for the division-

(i) from where the postal article or communication referred to in section 2 (2) (a) or (b) has been or will probably be dispatched or transmitted or where that postal article or communication will probably be received; or

(ii) where the proposed monitoring referred to in section 2 (2) (c) will be carried out; and

(b) if the judge concerned is convinced, on the grounds mentioned in a written application that complies with the directives referred to in section 6-

(i) that the offence that has been or is being or will probably be committed, is a serious offence that cannot be properly investigated in any other manner and of which the investigation in terms of this Act is necessary; or

(ii) that the security of the Republic is threatened or that the gathering of information concerning a threat to the security of the Republic is necessary.

(2) An application shall

(a) for the purposes referred to in subsection (1) (b) (i) or (ii) or subsection (4), be made by an officer referred to in section 33 of the South African Police Service Act, 1995 (Act No. 68 of 1995), provided that the officer concerned obtained in advance the approval of another officer in the South African Police Service with at least the rank of assistant-commissioner who shall be authorised in writing by the National Commissioner of the South African Police Service to grant such approval;

[Para. (a) substituted by s. 4 of Act No. 18 of 1996.]

(b)for the purposes of subsection (1) (b) (ii) or subsection (4), be made by an officer as defined in section 1 of the Defence Act, 1957 (Act No. 44 of 1957), provided that the officer concerned obtained in advance the approval of another officer in the South African National Defence Force with at least the rank of major-general who shall be authorized in writing by the Chief of the South African National Defence Force to grant such approval;

(c)for the purposes of subsection (1) (b) (ii) or subsection (4), be made by a member as defined in section 1 of the Intelligence Services Act, 1994, provided the member concerned obtained in advance the approval of another member of the Agency or the Service, as the case may be, holding a post of at least chief director.

[Para. (c) substituted by s. 32 of Act No. 38 of 1994.]

(3) A direction referred to in section 2 (2) shall be issued by the judge concerned for a period not exceeding three months at a time, and the period for which it has been issued shall be mentioned in the direction.

(4) The judge referred to in subsection (1) may, upon an application that complies with the directives referred to in section 6, extend the period referred to in subsection (3) for a further period not exceeding three months at a time if that judge is convinced that the extension is necessary for a reason mentioned in subsection (1) (b) (i) or (ii).

(5) An application referred to in subsection (1) (b) (i) or (ii) or subsection (4) shall be heard and a direction issued without any notice to the person, body or organization to which the application applies and without hearing such person, body or organization.

(6) An application referred to in subsection (1) (b) (i) or (ii) or subsection (4) may also be granted if an investigation in terms of this Act may disclose information that may contribute to preventing the perpetration of a serious offence.

4. Execution of direction.<(1) If a direction has been issued in terms of section 3, any member of the Force as defined in section 1 of the South African Police Service Act, 1995 (Act No. 68 of 1995), or a member, excluding a member of a visiting force, as defined in section 1 of the Defence Act, 1957 (Act No. 44 of 1957), or a member of the Agency or the Service may execute that direction, provided that the member concerned has been authorized by the officer or member who made the application in

terms of section 3 (2) to execute that direction or to assist with the execution of the direction concerned.

[Sub-s. (1) amended by s. 32 of Act No. 38 of 1994 and by s. 4 of Act No. 18 of 1996.]

(2) A member who executes a direction or assists with the execution of a direction may

(a) 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;

(b) return a postal article or telegram that was taken into possession in terms of paragraph (a) or cause it to be returned to the person or organization responsible for the transmission of the postal article or telegram, for transmission to the addressee concerned if such postal article or telegram, in the opinion of-

(i) an officer of at least the rank of major-general in the South African National Defence Force;

[Sub-para. (i) substituted by s. 4 of Act No. 18 of 1996.]

(ii) a member of the Agency or the Service holding a post of at least chief director; or

[Sub-para. (ii) amended by s. 32 of Act No. 38 of 1994 and substituted by s. 4 of Act No. 18 of 1996.]

(iii) an officer of at least the rank of assistant-commissioner in the South African Police Service.

[Sub-para. (iii) added by s. 4 of Act No. 18 of 1996.]

may be returned without prejudice to the maintenance of law and order in the Republic or without prejudice to the security of the Republic, as the case may be;

(c) on the instructions of the officer or member who made the application in terms of section 3 (2), dispose of the postal article or telegram that was taken into possession in terms of paragraph (a) in such manner as the maintenance of law and order in the Republic or the security of the

Republic requires, if such officer or member, as the case may be, is of the opinion that the postal article or telegram concerned cannot be returned in terms of paragraph (b) without prejudice to the maintenance of law and order in the Republic; or without prejudice to the security of the Republic, as the case may be.

(3) The officer or member who granted the authorization referred to in subsection (1), may authorize such number of members to assist with the execution of the direction as he deems necessary.

(4) A member who executes a direction or assists with the execution of a direction may at any time enter upon any premises 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.

5. Assistance at execution of direction by certain persons or organizations. (1) If a direction referred to in section 2 (2) or a copy thereof is handed to the person or organization who is responsible for the dispatching of a postal article or the transmission of a communication over a telecommunications line, or for the rendering of a postal service or telecommunication service, to a person, body or organization mentioned in that direction by a member who executes that direction or assists with the execution of that direction, the person, body or organization concerned shall as soon as possible

(a) intercept the postal article or telegram concerned or all postal articles or telegrams to which the direction applies and hand it or them over to a member who is authorized in terms of section 4 (1) to execute the direction concerned or to assist with the execution thereof;

(b) make available the necessary facilities and devices and enable the member who is authorized in terms of section 4 (1) to execute a direction or to assist with the execution of a direction, to effect the necessary connections in order to monitor conversations to which the direction applies.

(2) If a person, body or organization has made a facility, device or telecommunications line available for the purposes

mentioned in subsection (1) (b), the remuneration agreed upon by the person or organization and the National Commissioner of the South African Police Service, the Chief of the South African National Defence Force or the Director-General of the Agency or the Service, as the case may be, shall be paid to that person, body or organization.

[Sub-s. (2) amended by s. 32 of Act No. 38 of 1994.]

(3) If an agreement is not reached in terms of subsection (2), a reasonable remuneration shall be determined by the Minister for Posts, Telecommunications and Broadcasting, with the concurrence of the Minister of State Expenditure, in order to compensate the person, body or organization at least for any costs incurred as a result of any action in terms of this Act.

[Sub-s. (3) amended by s. 4 of Act No. 18 of 1996.]

6. Directives regarding applications. (The respective Judges-President of the Supreme Court of South Africa may jointly issue directives in which the manner and procedure of applications in terms of section 3 (1) and (4) are uniformly regulated.

7. Secrecy. (1) Any person who is or was concerned in the performance of any function in terms of this Act, shall not disclose any information which he obtained in the performance of such a function except

(a) to any person who of necessity requires it for the performance of his functions in terms of this Act;

(b) if he is a person who of necessity supplies it in the performance of his functions in terms of this Act;

(c) such 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.

(2) An employee of a person, body or organization referred to

in section 5 (1) shall not disclose any information which he obtained in the course of his 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) (a) to (d).

8. Offences and penalties. (1) Any person who contravenes a provision of section 2 (1) or 7 shall be guilty of an offence and liable on conviction

(a) in the case of a contravention of section 2 (1), to a fine, or to imprisonment for a period not exceeding two years; or

(b) in the case of a contravention of section 7, to a fine, or to imprisonment for a period not exceeding five years.

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

9. (1) Repeals section 118A of the Post Office Act, No. 44 of 1958.

(2) A direction issued under section 118A (1) of the Post Office Act, 1958, and which is still in force at the commencement of this Act, shall be deemed to be issued under section 2 (2) of this Act by the attorney-general referred to in section 3 (1) (a) of this Act and shall remain in force until the period or extended period for which that direction has been issued, lapses.

10. Short title and commencement. This Act shall be called the Interception and Monitoring Prohibition Act, 1992, and shall come into operation on a date fixed by the State President by proclamation in the Gazette.