

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO**

**REGULATION OF
INTERCEPTION OF
COMMUNICATIONS AND
PROVISION OF
COMMUNICATION-RELATED
INFORMATION BILL**

[B 50B—2001]

*(As agreed to by the Portfolio Committee on Justice and Constitutional Development
(National Assembly))*

AMENDMENTS AGREED TO

REGULATION OF INTERCEPTION OF COMMUNICATIONS AND PROVISION OF COMMUNICATION-RELATED INFORMATION BILL [B 50B—2001]

ARRANGEMENT OF SECTIONS

1. On page 4, in line 48, after “listed” to insert “or other”.

CLAUSE 16

1. On page 16, in line 39, after “(i)” to insert “subject to subsection (8),”.
2. On page 17, in line 52, to omit “the”.
3. On page 17, in line 53, after “(i)” to insert “the”.
4. On page 17, in line 56, after “(ii)” to insert “subject to subsection (8), the”.
5. On page 17, in line 56, to omit “where” and to substitute “at which”.
6. On page 17, in line 56, after “communications” to insert “are”.
7. On page 18, after line 24, to add:

(8) The requirements of subsections (a) and ~~(5)(b)(ii)~~ relating to the description of the facilities from which, or the place at which, the communication is to be intercepted do not apply if, in the case of an application for the issuing of an interception direction which authorises the interception of—

(a) a direct communication—

- (i) the application contains full particulars of all the facts and circumstances as to why such description is not practical;
- (ii) the application indicates the identity of the person whose communication is required to be intercepted; and
- (iii) the designated judge is satisfied, on the facts alleged in the application, that such description is not practical; and

(b) an indirect communication, the—

- (i) application indicates the identity of the customer whose communication is required to be intercepted;
- (ii) applicant submits proof that there are reasonable grounds to believe that the actions of the customer concerned could have the effect of preventing interception from a specified facility;
- (iii) designated judge is satisfied that sufficient proof has been submitted; and
- (iv) interception direction authorises the interception only for such time as it is reasonable to presume ~~that~~ the customer identified in the application is or was reasonably close to the instrument through which such communication will be or was transmitted.

(9) The interception of a communication under an interception direction to which the requirements of subsections ~~(2)(d)(i)(aa)~~ and ~~(5)(b)(ii)~~ do not apply by reason of subsection ~~(8)(a)~~ may not take

place until the place at which the communication is to be intercepted, is determined by the authorised person who executes the interception direction concerned or assists with the execution thereof.

(10)(a) A telecommunication service provider to whom an interception direction referred to in subsection (8)(b) is addressed, may in writing apply to a designated judge for an amendment or the cancellation of the interception direction concerned on the ground that his or her assistance with respect to the interception of the indirect communication cannot be performed in a timely or reasonable fashion.

(b) A designated judge to whom an application is made in terms of paragraph (a) must, as soon as possible after receipt thereof—

- (i) inform the applicant concerned of that application; and
- (ii) consider and give a decision in respect of the application.

CLAUSE 30

1. On page 29, in line 27, after “(ii)” to insert:

security, technical and functional requirements of the

2. On page 29, in line 35, after “may” to insert”, subject to subsection (8),”.
3. On page 29, in line 35, after “years” to insert “and not more than five years”.
4. On page 29, from line 43, to omit paragraph (a) and to substitute:
 - (a) must, where applicable, prescribe the—
 - (i) capacity needed for interception purposes;
 - (ii) technical requirements of the systems to be used;
 - (iii) connectivity with interception centres;
 - (iv) manner of routing duplicate signals of indirect communications to designated interception centres in terms of section 28(1)(b)(i); and
 - (v) manner of routing real-time or archived communication-related information to designated interception centres in terms of section 28(2)(u); and
5. On page 30, after line 24, to add:

(8) If a period of more than three years has been determined in terms of subsection (2)(a)(iii), the Cabinet member responsible for communications may, upon application by the telecommunication service provider concerned and in consultation with the relevant Ministers, reduce that period to a period which may not be less than three years by issuing an amended directive under subsection (2)(a).

CLAUSE 51

1. On page 40, from line 16, to omit subparagraph (viii).

CLAUSE 57

1. On page 42, in line 19, after “listed” to insert “or other”.

CLAUSE 62

1. On page 45, after line 36, to add:

(6) **(a)** Any person who, at the fixed date, is the owner of a cellular phone or a **SIM-card** must, in the manner and within the period determined by the Minister by notice in the Gazette, provide the information referred to in section 40(1) to the person who sold, or in any other manner provided, the cellular phone or SIM-card to him or her, or to the telecommunication service provider or other person mentioned in such notice.

(b) Different periods may be determined in terms of **paragraph(a)** in respect of—

(i) owners whose surnames start with different letters of the alphabet, or whose dates of birth fall in different months; or

(ii) categories of numbers of cellular phones or **SIM-cards**.

(c) Before the Minister exercises the powers conferred on him or her by paragraph **(a)**, he or she must consult the telecommunication service providers concerned.

(d) Any notice issued under **paragraph(a)** must, before publication thereof in the *Gazette*, be submitted to Parliament.

(e) Section 40(2) and (3) applies, with the necessary changes, in respect of a telecommunication service provider or other person to whom information has been provided in terms of paragraph **(a)**.