

addressed, may provide any real-time or archived communication-related information to which that real-time communication-related direction or archived communication-related direction relates.

#### **Provision of real-time or archived communication-related information upon authorisation by customer**

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14. Any telecommunication service provider may, upon the written authorisation given by his or her customer on each occasion, and subject to the conditions determined by the customer concerned, provide to any person specified by that customer real-time or archived communication-related information which relates to the customer concerned.

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#### **Availability of other procedures for obtaining real-time or archived communication-related information**

15. (1) Subject to subsection (2), the availability of the procedures in respect of the provision of real-time or archived communication-related information provided for in sections 17 and 19 does not preclude obtaining such information in respect of any person in accordance with a procedure prescribed in any other Act.

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(2) Any real-time or archived communication-related information which is obtained in terms of such other Act may not be obtained on an ongoing basis.

### **CHAPTER 3**

#### **APPLICATIONS FOR, AND ISSUING OF, DIRECTIONS AND ENTRY WARRANTS**

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##### **Application for, and issuing of, interception direction**

16. (1) An applicant may apply to a designated judge for the issuing of an interception direction.

(2) Subject to section 23(1), an application referred to in subsection (1) must be in writing and must—

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(a) indicate the identity of the—

(i) applicant and, if known and appropriate, the identity of the law enforcement officer who will execute the interception direction;

(ii) person or customer, if known, whose communication is required to be intercepted; and

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(iii) postal service provider or telecommunication service provider to whom the direction must be addressed, if applicable;

(b) specify the ground referred to in subsection (5)(a) on which the application is made;

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(c) contain full particulars of all the facts and circumstances alleged by the applicant in support of his or her application;

(d) include—

(i) subject to subsection (8), a description of the—

(aa) nature and location of the facilities from which, or the place at which, the communication is to be intercepted, if known; and

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(bb) type of communication which is required to be intercepted; and

(ii) the basis for believing that evidence relating to the ground on which the application is made will be obtained through the interception;

(e) if applicable, indicate whether other investigative procedures have been applied and have failed to produce the required evidence or must indicate the reason why other investigative procedures reasonably appear to be unlikely to succeed if applied or are likely to be too dangerous to apply in order to obtain the required evidence: Provided that this paragraph does not apply to an application for the issuing of a direction in respect of the ground referred to in subsection (5)(a)(i) or (v) if the—

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(i) serious offence has been or is being or will probably be committed for the benefit of, at the direction of, or in association with, a person, group of persons or syndicate involved in organised crime; or

- (ii) property is or could probably be an instrumentality of a serious offence or is or could probably be the proceeds of unlawful activities;
- (f) indicate the period for which the interception direction is required to be issued;
- (g) indicate whether any previous application has been made for the issuing of an interception direction in respect of the same person or customer, facility or place specified in the application and, if such previous application exists, must indicate the current status of that application; and 5
- (h) comply with any supplementary directives relating to applications for interception directions issued under section 58. 10
- (3) An application on a ground referred to in—
  - (a) subsection (5)(a)(i), must be made by an applicant referred to in paragraph (a), (d) or (f) of the definition of “applicant”;
  - (b) subsection (5)(a)(ii) or (iii), must be made by an applicant referred to in paragraph (b) or (c) of the definition of “applicant”; 15
  - (c) subsection (5)(a)(iv), must, in the case of—
    - (i) the investigation of a serious offence, be made by an applicant referred to in paragraph (a) or (d) of the definition of “applicant”; and
    - (ii) the gathering of information, be made by an applicant referred to in paragraph (c) of the definition of “applicant”; and 20
  - (d) subsection (5)(a)(v), must be made by an applicant referred to in paragraph (e) of the definition of “applicant”;

Provided that an applicant referred to in paragraph (f) of the definition of “applicant” may only make an application on the ground referred to in subsection (5)(a)(i)—

- (i) if the offence allegedly has been or is being or will be committed by a member of the Police Service; or 25
- (ii) in respect of a death in police custody or as a result of police action.
- (4) Notwithstanding section 2 or anything to the contrary in any other law contained, a designated judge may, upon an application made to him or her in terms of subsection (1), issue an interception direction. 30
- (5) An interception direction may only be issued if the designated judge concerned is satisfied, on the facts alleged in the application concerned, that—
  - (a) there are reasonable grounds to believe that—
    - (i) a serious offence has been or is being or will probably be committed;
    - (ii) the gathering of information concerning an actual threat to the public health or safety, national security or compelling national economic interests of the Republic is necessary; 35
    - (iii) the gathering of information concerning a potential threat to the public health or safety or national security of the Republic is necessary;
    - (iv) the making of a request for the provision, or the provision to the competent authorities of a country or territory outside the Republic, of any assistance in connection with, or in the form of, the interception of communications relating to organised crime or any offence relating to terrorism or the gathering of information relating to organised crime or terrorism, is in— 40
      - (aa) accordance with an international mutual assistance agreement; or
      - (bb) the interests of the Republic’s international relations or obligations; 45
    - or
    - (v) the gathering of information concerning property which is or could probably be an instrumentality of a serious offence or is or could probably be the proceeds of unlawful activities is necessary; 50
  - (b) there are reasonable grounds to believe that—
    - (i) the interception of particular communications concerning the relevant ground referred to in paragraph (a) will be obtained by means of such an interception direction; and 55
    - (ii) subject to subsection (8), the facilities from which, or the place at which, the communications are to be intercepted are being used, or are about to be used, in connection with the relevant ground referred to in paragraph (a) are commonly used by the person or customer in respect of whom the application for the issuing of an interception direction is made; and 60
  - (c) in respect of the grounds referred to in paragraph (a)(i), (iii), (iv) or (v), other investigative procedures have been applied and have failed to produce the required evidence or reasonably appear to be unlikely to succeed if applied or

are likely to be too dangerous to apply in order to obtain the required evidence and that the offence therefore cannot adequately be investigated, or the information therefore cannot adequately be obtained, in another appropriate manner: Provided that this paragraph does not apply to an application for the issuing of a direction in respect of the ground referred to in paragraph (a)(i) or (v) if the— 5

- (i) serious offence has been or is being or will probably be committed for the benefit of, at the direction of, or in association with, a person, group of persons or syndicate involved in organised crime; or
- (ii) property is or could probably be an instrumentality of a serious offence or is or could probably be the proceeds of unlawful activities. 10

(6) An interception direction—

- (a) must be in writing;
- (b) must contain the information referred to in subsection (2)(a)(ii) and (iii) and (d)(i); 15
- (c) may specify conditions or restrictions relating to the interception of communications authorised therein; and
- (d) may be issued for a period not exceeding three months at a time, and the period for which it has been issued must be specified therein.

(7) (a) An application must be considered and an interception direction issued without any notice to the person or customer to whom the application applies and without hearing such person or customer. 20

(b) A designated judge considering an application may require the applicant to furnish such further information as he or she deems necessary.

(8) The requirements of subsections (2)(d)(i)(aa) 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— 25

(a) a direct communication—

- (i) the application contains full particulars of all the facts and circumstances as to why such description is not practical; 30
- (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 35

(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; 40
- (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. 45

(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. 50

(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. 55

(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. 60

### Application for, and issuing of, real-time communication-related direction

17. (1) If no interception direction has been issued and only real-time communication-related information on an ongoing basis is required, an applicant may apply to a designated judge for the issuing of a real-time communication-related direction.

(2) Subject to section 23(1), an application referred to in subsection (1) must be in writing and must—

- (a) indicate the identity of the—
  - (i) applicant;
  - (ii) customer, if known, in respect of whom the real-time communication-related information is required; and
  - (iii) telecommunication service provider to whom the real-time communication-related direction must be addressed;
- (b) specify the ground referred to in subsection (4) on which the application is made;
- (c) contain full particulars of all the facts and circumstances alleged by the applicant in support of his or her application;
- (d) include—
  - (i) a description of the type of real-time communication-related information that is required; and
  - (ii) the basis for believing that evidence relating to the ground on which the application is made will be obtained through the provision of the real-time communication-related information;
- (e) indicate whether the real-time communication-related information must be—
  - (i) routed to a designated interception centre specified in the application; or
  - (ii) provided to the law enforcement agency concerned;
- (f) indicate the period for which, and the manner in which, the real-time communication-related information is required to be provided;
- (g) indicate whether any previous application has been made for the issuing of a real-time communication-related direction in respect of the same customer or real-time communication-related information specified in the application and, if such previous application exists, must indicate the current status of that application; and
- (h) comply with any supplementary directives relating to applications for real-time communication-related directions issued under section 58.

(3) Notwithstanding section 12 or anything to the contrary in any other law contained, a designated judge may, upon an application made to him or her in terms of subsection (1), issue a real-time communication-related direction.

(4) A real-time communication-related direction may only be issued if it appears to the designated judge concerned, on the facts alleged in the application concerned, that there are reasonable grounds to believe that—

- (a) a serious offence has been or is being or will probably be committed;
- (b) the gathering of information concerning an actual threat to the public health or safety, national security or compelling national economic interests of the Republic is necessary;
- (c) the gathering of information concerning a potential threat to the public health or safety or national security of the Republic is necessary;
- (d) the making of a request for the provision, or the provision to the competent authorities of a country or territory outside the Republic, of any assistance in connection with, or in the form of, the interception of communications relating to organised crime or any offence relating to terrorism or the gathering of information relating to organised crime or terrorism, is in—
  - (i) accordance with an international mutual assistance agreement; or
  - (ii) the interests of the Republic's international relations or obligations; or
- (e) the gathering of information concerning property which is or could probably be an instrumentality of a serious offence or is or could probably be proceeds of unlawful activities is necessary,

and that the provision of real-time communication-related information is necessary for purposes of investigating such offence or gathering such information.

(5) A real-time communication-related direction—

- (a) must be in writing;
- (b) must contain the information referred to in subsection (2)(a)(ii) and (iii), (d)(i) and (e);

- (c) may specify conditions or restrictions relating to the provision of real-time communication-related information authorised therein; and
  - (d) may be issued for a period not exceeding three months at a time, and the period for which it has been issued must be specified therein.
- (6) Section 16(3) and (7) applies, with the necessary changes, in respect of an application for, and the issuing of, a real-time communication-related direction. 5

**Combined application for, and issuing of, interception direction, real-time communication-related direction and archived communication-related direction or interception direction supplemented by real-time communication-related direction** 10

18. (1) If the—
- (a) interception of an indirect communication and the provision of communication-related information, whether real-time or archived or both; or
  - (b) provision of real-time and archived communication-related information,
- are required, an applicant may, subject to sections 16(2) and (3), 17(1) and (2) and 19(1) 15 and (2), in a combined application, apply to a designated judge for the simultaneous issuing of any combination of directions referred to in those sections.
- (2) (a) If an interception direction has been issued under section 16, the applicant who made the application in respect of the interception direction concerned or, if he or she is not available, any other applicant who would have been entitled to make that application, may, subject to section 17(1) and (2), apply to a designated judge for the issuing of a real-time communication-related direction to supplement that interception direction. 20
- (b) An application referred to in paragraph (a) must—
- (i) contain an affidavit setting forth the results obtained from the interception direction concerned from the date of its issuance up to the date on which that application is made, or a reasonable explanation of the failure to obtain such results; 25
  - (ii) contain proof that an interception direction has been issued; and
  - (iii) be made at any stage after the issuing of the interception direction concerned, but before the expiry of the period or extended period for which it has been issued. 30
- (3) Notwithstanding sections 2 and 12 or anything to the contrary in any other law contained, a designated judge may, upon an application made to him or her in terms of—
- (a) subsection (1) and subject to sections 16(5), (6) and (7), 17(4), (5) and (6) and 19(4), (5) and (6), issue the combination of directions applied for; or 35
  - (b) subsection (2) and subject to section 17(4), (5) and (6), issue a real-time communication-related direction to supplement that interception direction: Provided that a real-time communication-related direction issued under this paragraph expires when the period or extended period for which the interception direction concerned has been issued, lapses. 40
- (4) Notwithstanding section 19(1), (3) and (4)—
- (a) an application in terms of subsection (1) for the issuing of an archived communication-related direction may only be made to a designated judge; and
  - (b) only a designated judge may issue an archived communication-related direction under subsection (3)(a). 45

**Application for, and issuing of, archived communication-related direction**

19. (1) If only archived communication-related information is required, an applicant may apply to a judge of a High Court, a regional court magistrate or a magistrate for the issuing of an archived communication-related direction. 50
- (2) An application referred to in subsection (1) must be in writing and must—
- (a) contain, with the necessary changes, the information referred to in section 17(2); and
  - (b) comply with any supplementary directives relating to applications for archived communication-related directions issued under section 58. 55
- (3) Notwithstanding section 12 or anything to the contrary in any other law contained, a judge of a High Court, a regional court magistrate or a magistrate may, upon an application made to him or her in terms of subsection (1), issue an archived communication-related direction.

- (4) An archived communication-related direction may only be issued if it appears to the judge of a High Court, regional court magistrate or magistrate concerned, on the facts alleged in the application concerned, that there are reasonable grounds to believe that—
- (a) a serious offence has been or is being or will probably be committed;
  - (b) the gathering of information concerning an actual threat to the public health or safety, national security or compelling national economic interests of the Republic is necessary;
  - (c) the gathering of information concerning a potential threat to the public health or safety or national security of the Republic is necessary;
  - (d) the making of a request for the provision, or the provision to the competent authorities of a country or territory outside the Republic, of any assistance in connection with, or in the form of, the interception of communications relating to organised crime or any offence relating to terrorism or the gathering of information relating to organised crime or terrorism, is in—
    - (i) accordance with an international mutual assistance agreement; or
    - (ii) the interests of the Republic's international relations or obligations; or
  - (e) the gathering of information concerning property which is or could probably be an instrumentality of a serious offence or is or could probably be the proceeds of unlawful activities is necessary,
- and that the provision of archived communication-related information is necessary for purposes of investigating such offence or gathering such information.
- (5) An archived communication-related direction—
- (a) must be in writing;
  - (b) must contain the information referred to in section 17(2)(a)(ii) and (iii), (d)(i) and (e);
  - (c) must state the period within which the archived communication-related information must be routed or provided; and
  - (d) may specify conditions or restrictions relating to the provision of archived communication-related information authorised therein.
- (6) Section 16(3) and (7) applies, with the necessary changes, in respect of an application for, and the issuing of, an archived communication-related direction.
- (7) If a judge of a High Court, regional court magistrate or magistrate issues an archive communication-related direction, he or she must, as soon as practicable thereafter, submit a copy of the application and archived communication-related direction concerned to a designated judge.
- (8) A designated judge must keep all copies of applications and archived communication-related directions submitted to him or her in terms of subsection (7), or cause it to be kept, for a period of at least five years.

#### **Amendment or extension of existing direction**

20. (1) The applicant who made the application in respect of an existing direction or if he or she is not available, any other applicant who would have been entitled to make that application, may, at any stage after the issuing of the existing direction concerned, but before the expiry of the period for which it has been issued, apply to a designated judge for an amendment thereof or the extension of the period for which it has been issued.
- (2) An application referred to in subsection (1) must be in writing and must—
- (a) contain full particulars of the reasons and circumstances alleged by the applicant in support of his or her application;
  - (b) in the case of an application for the—
    - (i) amendment of an existing direction, indicate the amendment which is required; or
    - (ii) extension of the period for which an existing direction has been issued, indicate the period for which the extension is required;
  - (c) contain an affidavit setting forth the results obtained from the direction concerned from the date of its issuance up to the date on which that application is made, or a reasonable explanation of the failure to obtain such results; and
  - (d) comply with any supplementary directives relating to applications for the amendment or extension of directions issued under section 58.
- (3) A designated judge may, upon an application made to him or her in terms of subsection (1)—

- (a) amend an existing direction; or
- (b) extend the period for which an existing direction has been issued.

(4) An existing direction may only be amended or the period for which it has been issued may only be extended if the designated judge concerned is satisfied, on the facts alleged in the application concerned, that the amendment or extension is necessary for purposes of achieving the objectives of the direction concerned: Provided that the period for which an existing direction has been issued may only be extended for a further period not exceeding three months at a time. 5

(5) Any amendment of an existing direction or extension of the period for which it has been issued, must be in writing. 10

(6) Section 16(7) applies, with the necessary changes, in respect of the amendment of an existing direction or the extension of the period for which an existing direction has been issued.

### **Application for, and issuing of, decryption direction**

**21. (1)** An applicant who— 15

- (a) makes an application referred to in section 16(1) may in his or her application also apply for the issuing of a decryption direction; or
- (b) made an application referred to in section 16(1) or, if he or she is not available, any other applicant who would have been entitled to make that application, may, at any stage after the issuing of the interception direction in respect of which such an application was made, but before the expiry of the period or extended period for which it has been issued, apply to a designated judge for the issuing of a decryption direction. 20

(2) Subject to section 23(1), an application referred to in subsection (1) must be in writing and must— 25

- (a) indicate the identity of the—
  - (i) applicant;
  - (ii) customer, if known, in respect of whom the decryption of encrypted information is required; and
  - (iii) decryption key holder to whom the decryption direction must be addressed; 30
- (b) describe the encrypted information which is required to be decrypted;
- (c) specify the—
  - (i) decryption key, if known, which must be disclosed; or
  - (ii) decryption assistance which must be provided, and the form and manner in which it must be provided; 35
- (d) indicate the period for which the decryption direction is required to be issued;
- (e) indicate whether any previous application has been made for the issuing of a decryption direction in respect of the same customer or encrypted information specified in the application and, if such previous application exists, must indicate the current status of that application; 40
- (f) if the application is made in terms of subsection (1)(b), also contain—
  - (i) proof that an interception direction has been issued; and
  - (ii) an affidavit setting forth the results obtained from the interception direction concerned from the date of its issuance up to the date on which that application is made, or a reasonable explanation of the failure to obtain such results; and 45
- (g) comply with any supplementary directives relating to applications for decryption directions issued under section 58.

(3) A designated judge may, upon an application made to him or her in terms of subsection (1), issue a decryption direction. 50

(4) A decryption direction may only be issued—

- (a) if the designated judge concerned is satisfied, on the facts alleged in the application concerned, that there are reasonable grounds to believe that—
  - (i) any indirect communication to which the interception direction concerned applies, or any part of such an indirect communication, consists of encrypted information; 55
  - (ii) the decryption key holder specified in the application is in possession of the encrypted information and the decryption key thereto;

- (iii) the purpose for which the interception direction concerned was issued would be defeated, in whole or in part, if the decryption direction was not issued; and
- (iv) it is not reasonably practicable for the authorised person who executes the interception direction concerned or assists with the execution thereof, to obtain possession of the encrypted information in an intelligible form without the issuing of a decryption direction; and 5
- (b) after the designated judge concerned has considered—
  - (i) the extent and nature of any other encrypted information, in addition to the encrypted information in respect of which the decryption direction is to be issued, to which the decryption key concerned is also a decryption key; and 10
  - (ii) any adverse effect that the issuing of the decryption direction might have on the business carried on by the decryption key holder to whom the decryption direction is addressed. 15
- (5) A decryption direction—
  - (a) must be in writing;
  - (b) must contain the information referred to in subsection (2)(a)(ii) and (iii), (b) and (c);
  - (c) must state the period within which the decryption key must be disclosed or the decryption assistance must be provided, whichever is applicable; 20
  - (d) may specify conditions or restrictions relating to decryption authorised therein; and
  - (e) may be issued for a period not exceeding three months at a time, and the period for which it has been issued must be specified therein: Provided that a decryption direction expires when the period or extended period for which the interception direction concerned has been issued, lapses. 25
- (6) Section 16(7) applies, with the necessary changes, in respect of the issuing of a decryption direction.

#### **Application for, and issuing of, entry warrant**

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- 22. (1) An applicant who—
  - (a) makes an application referred to in section 16(1) may in his or her application also apply for the issuing of an entry warrant; or
  - (b) made an application referred to in section 16(1) or, if he or she is not available, any other applicant who would have been entitled to make that application, may, at any stage after the issuing of the interception direction in respect of which such an application was made, but before the expiry of the period or extended period for which it has been issued, apply to a designated judge for the issuing of an entry warrant. 35
- (2) Subject to section 23(1), an application referred to in subsection (1) must be in writing and must— 40
  - (a) indicate the—
    - (i) identity of the applicant;
    - (ii) premises in respect of which the entry warrant is required to be issued; and 45
    - (iii) specific purpose, referred to in the definition of “entry warrant”, for which the application is made;
  - (b) if the application is made in terms of subsection (1)(b), also contain—
    - (i) proof that an interception direction has been issued; and
    - (ii) an affidavit setting forth the results obtained from the interception direction concerned from the date of its issuance up to the date on which that application is made, or a reasonable explanation of the failure to obtain such results; 50
  - (c) indicate whether any previous application has been made for the issuing of an entry warrant for the same purpose or in respect of the same premises specified in the application and, if such previous application exists, must indicate the current status of that application; and 55
  - (d) comply with any supplementary directives relating to applications for entry warrants issued under section 58.
- (3) A designated judge may, upon an application made to him or her in terms of subsection (1), issue an entry warrant. 60



(4) An entry warrant may only be issued if the designated judge concerned is satisfied, on the facts alleged in the application concerned, that—

- (a) the entry of the premises concerned is necessary for a purpose referred to in the definition of “entry warrant”; or
  - (b) there are reasonable grounds to believe that it would be impracticable to intercept a communication under the interception direction concerned otherwise than by the use of an interception device installed on the premises.
- (5) An entry warrant—
- (a) must be in writing;
  - (b) must contain the information referred to in subsection (2)(a)(ii) and (iii); and
  - (c) may contain conditions or restrictions relating to the entry upon the premises concerned as the designated judge deems necessary.
- (6) An entry warrant expires when—
- (a) the period or extended period for which the interception direction concerned has been issued, lapses; or
  - (b) it is cancelled in terms of section 23(11) or 25(1) or (2) by the designated judge who issued it or, if he or she is not available, by any other designated judge,

whichever occurs first.

(7) Section 16(7) applies, with the necessary changes, in respect of the issuing of an entry warrant.

(8) If an entry warrant has expired as contemplated in subsection (6)(a), the applicant who made the application in respect of the entry warrant concerned or, if he or she is not available, any other applicant who would have been entitled to make that application, must, as soon as practicable after the date of expiry of the entry warrant concerned, and without applying to a judge for the issuing of a further entry warrant, remove, or cause to be removed, any interception device which has been installed thereunder and which, at the date of expiry of that entry warrant, has not yet been removed from the premises concerned.

#### **Oral application for, and issuing of, direction, entry warrant, oral direction or oral entry warrant**

23. (1) An application referred to in section 16(1), 17(1), 18(1), 21(1) or 22(1) may be made orally by an applicant who is entitled to make such an application if he or she is of the opinion that it is not reasonably practicable, having regard to the urgency of the case or the existence of exceptional circumstances, to make a written application.

(2) An oral application referred to in subsection (1) must—

- (a) contain the information referred to in section 16(2), 17(2), 21(2) or 22(2), whichever is applicable;
- (b) indicate the particulars of the urgency of the case or the other exceptional circumstances which, in the opinion of the applicant, justify the making of an oral application; and
- (c) comply with any supplementary directives relating to oral applications issued under section 58.

(3) Notwithstanding sections 2 and 12 or anything to the contrary in any other law contained, a designated judge may, upon an oral application made to him or her in terms of subsection (1), issue the direction or entry warrant applied for.

(4) A direction or an entry warrant may only be issued under subsection (3)—

- (a) if the designated judge concerned is satisfied, on the facts alleged in the oral application concerned, that—
  - (i) there are reasonable grounds to believe that the direction or entry warrant applied for could be issued;
  - (ii) a direction is immediately necessary on a ground referred to in section 16(5)(a), 17(4) or 21(4)(a), whichever is applicable, or an entry warrant is immediately necessary on a ground referred to in section 22(4); and
  - (iii) it is not reasonably practicable, having regard to the urgency of the case or the existence of exceptional circumstances, to make a written application for the issuing of the direction or entry warrant applied for; and
- (b) on condition that the applicant concerned must submit a written application to the designated judge concerned within 48 hours after the issuing of the direction or entry warrant under subsection (3).

(5) A direction or entry warrant issued under subsection (3) must be in writing.

(6) Section 16(5)(b) and (c), (6) and (7), 17(5) and (6), 21(4)(b), (5) and (6) or 22(5), (6), (7) and (8), whichever is applicable, applies, with the necessary changes, in respect of the issuing of a direction or an entry warrant under subsection (3).

(7) Notwithstanding subsection (5), a designated judge may, upon an oral application made to him or her in terms of subsection (1), orally issue the direction or entry warrant applied for. 5

(8) An oral direction or oral entry warrant may only be issued under subsection (7)—

(a) if the designated judge concerned is satisfied, on the facts alleged in the oral application concerned, that— 10

(i) it is not reasonably practicable, having regard to the urgency of the case or the existence of exceptional circumstances to issue the direction or entry warrant applied for in writing; or

(ii) any other exceptional circumstances exist which justify the issuing of an oral direction or oral entry warrant; and 15

(b) on condition that the applicant concerned must submit a written application to the designated judge concerned within 48 hours after the issuing of the oral direction or oral entry warrant under subsection (7).

(9) Section 16(5)(b) and (c), (6)(b), (c) and (d) and (7), 17(5)(b), (c) and (d) and (6), 21(4)(b), (5)(b), (c), (d) and (e) and (6) or 22(5)(b) and (c), (6), (7) and (8), applies, with the necessary changes, in respect of the issuing of an oral direction or oral entry warrant under subsection (7). 20

(10) A designated judge who issues an oral direction or oral entry warrant under subsection (7) must—

(a) immediately after the issuing thereof, inform the applicant and, if applicable, the postal service provider or telecommunication service provider to whom it is addressed, orally of such an oral direction or oral entry warrant, including the— 25

(i) contents thereof; and

(ii) period for which it has been issued; and 30

(b) confirm that oral direction or oral entry warrant in writing within 12 hours after the issuing thereof.

(11) A designated judge who issued—

(a) a direction or an entry warrant under subsection (3); or

(b) an oral direction or oral entry warrant under subsection (7), 35

or, if he or she is not available, any other designated judge who would have been entitled to issue such direction, entry warrant, oral direction or oral entry warrant must, upon receipt of a written application submitted to him or her in terms of subsection (4)(b) or (8)(b), reconsider that application whereupon he or she may confirm, amend or cancel that direction, entry warrant, oral direction or oral entry warrant. 40

(12) If a direction, entry warrant, oral direction or oral entry warrant is—

(a) confirmed or amended in terms of subsection (11), the designated judge concerned must forthwith in writing inform—

(i) the applicant concerned; and

(ii) if applicable, the postal service provider, telecommunication service provider or decryption key holder concerned, 45  
of such confirmation or amendment; or

(b) cancelled in terms of subsection (11), section 25(3), (4) and (5) applies with the necessary changes.

## Reports on progress 50

24. The designated judge who issued a direction or an entry warrant may at the issuing thereof or at any stage before the date of expiry thereof, in writing require the applicant who made the application in respect of the direction or entry warrant concerned to report to him or her in writing—

(a) at such intervals as he or she determines, on— 55

(i) the progress that has been made towards achieving the objectives of the direction or entry warrant concerned; and

(ii) any other matter which the designated judge deems necessary; or

(b) on the date of expiry of the entry warrant concerned, on whether the interception device has been removed from the premises concerned and, if so, the date of such removal. 60

### **Cancellation of direction, entry warrant, oral direction or oral entry warrant**

**25.** (1) The designated judge who issued a direction or an entry warrant or, if he or she is not available, any other designated judge who would have been entitled to issue such direction or entry warrant may cancel that direction or entry warrant if—

- (a) the applicant concerned fails to submit a report in terms of section 24, if applicable; or 5
- (b) he or she, upon receipt of a report submitted in terms of section 24, is satisfied that the—
  - (i) objectives of the direction or entry warrant concerned have been achieved; or 10
  - (ii) ground on which the direction or the purpose for which the entry warrant concerned was issued, has ceased to exist.

(2) The designated judge who issued—

- (a) a direction or an entry warrant under section 23(3); or
- (b) an oral direction or oral entry warrant, 15

or, if he or she is not available, any other designated judge who would have been entitled to issue such a direction, entry warrant, oral direction or oral entry warrant, must cancel that direction, entry warrant, oral direction or oral entry warrant if the applicant concerned fails to comply with section 23(4)(b) or (8)(b).

(3) If a designated judge cancels— 20

- (a) a direction or an entry warrant;
- (b) a direction or an entry warrant issued under section 23(3); or
- (c) an oral direction or oral entry warrant,

in terms of subsection (1) or (2), he or she must forthwith in writing inform—

- (i) the applicant concerned; and 25
- (ii) if applicable, the postal service provider, telecommunication service provider or decryption key holder concerned,

of such cancellation.

(4) If an entry warrant or oral entry warrant is cancelled in terms of subsection (1) or (2), the applicant concerned must, as soon as practicable after having been informed of such cancellation, remove, or cause to be removed, any interception device which has been installed under the entry warrant or oral entry warrant concerned. 30

(5) If a direction issued under section 23(3) or an oral direction is cancelled in terms of subsection (2)—

- (a) the contents of any communication intercepted under that direction or oral direction will be inadmissible as evidence in any criminal proceedings or civil proceedings as contemplated in Chapter 5 or 6 of the Prevention of Organised Crime Act, unless the court is of the opinion that the admission of such evidence would not render the trial unfair or otherwise be detrimental to the administration of justice; or 40
- (b) any postal article that was taken into possession under that direction or oral direction must be dealt with in accordance with section 26(4).

## **CHAPTER 4**

### **EXECUTION OF DIRECTIONS AND ENTRY WARRANTS**

#### **Execution of direction**

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**26.** (1) (a) If a direction has been issued under this Act, any—

- (i) law enforcement officer may execute that direction; or
- (ii) law enforcement officer or other person may assist with the execution thereof,

if the law enforcement officer or person concerned has been authorised by the applicant who made the application for the issuing of the direction concerned to execute that direction or to assist with the execution thereof. 50

(b) A direction issued under this Act upon an application made by an applicant referred to in paragraph (f) of the definition of “applicant” may only be executed by a law enforcement officer authorised thereto in writing by the applicant concerned, after consultation with the National Commissioner, if that law enforcement officer is a member of the Police Service, or the National Director, if that law enforcement officer is a member of the Directorate or of any component referred to in paragraph (e) of the definition of “law enforcement agency”. 55

(2) The applicant concerned may authorise such number of authorised persons to assist with the execution of the direction as he or she deems necessary.

(3) An authorised person who executes a direction or assists with the execution thereof may intercept, at any place in the Republic, any communication in the course of its occurrence or transmission to which the direction applies.

(4) If any postal article has been taken in possession in terms of subsection (3), the authorised person who executes the direction concerned or assists with the execution thereof—

- (a) must take proper care of such postal article and may, if the postal article concerned is perishable, with due regard to the interests of the persons concerned and with the written approval of the applicant concerned, dispose of that postal article in such manner as the circumstances may require; 10
- (b) must, with the written approval of the applicant concerned, return such postal article, if it has not been disposed of in terms of paragraph (a), or cause it to be returned to the postal service provider concerned if, in the opinion of the applicant concerned— 15
  - (i) no criminal proceedings or civil proceedings as contemplated in Chapter 5 or 6 of the Prevention of Organised Crime Act, will be instituted in connection with such postal article; or
  - (ii) such postal article will not be required at any such criminal or civil proceedings for purposes of evidence or for purposes of an order of court; and 20
  - (iii) such postal article may be returned without prejudice to the public health or safety, national security or compelling national economic interests of the Republic, as the case may be; or 25
- (c) may, in circumstances other than those referred to in—
  - (i) paragraph (b), with the written approval of the applicant concerned, return such postal article or cause it to be returned to the postal service provider concerned if such postal article—
    - (aa) has not been disposed of in terms of paragraph (a); and 30
    - (bb) in the opinion of the applicant concerned, may be returned without prejudice to the public health or safety, national security or compelling national economic interests of the Republic, as the case may be; or
  - (ii) paragraph (a), on the written instructions of the applicant concerned dispose of such postal article in such manner as the public health or safety, national security or compelling national economic interests of the Republic, as the case may be, requires, if such postal article—
    - (aa) has not been disposed of in terms of paragraph (a); and
    - (bb) in the opinion of the applicant concerned, cannot be returned in 40
      - terms of subparagraph (i) without prejudice to the public health or safety, national security or compelling national economic interests of the Republic, as the case may be.

#### **Execution of entry warrant**

27. If an entry warrant has been issued, any authorised person who executes the interception direction in respect of which that entry warrant has been issued or assists with the execution thereof may, at any time during which the entry warrant is of force, without prior notice enter the premises specified in the entry warrant and perform any act relating to the purpose, referred to in the definition of “entry warrant”, for which the entry warrant concerned has been issued. 50

#### **Assistance by postal service provider and telecommunication service provider**

28. (1) If an interception direction or a copy thereof is handed to the postal service provider or telecommunication service provider to whom the interception direction is addressed by the authorised person who executes that interception direction or assists with the execution thereof, the— 55

- (a) postal service provider concerned must intercept the postal article to which the interception direction applies and hand it to the authorised person concerned; or
- (b) telecommunication service provider concerned must immediately—

- (i) route the duplicate signals of indirect communications to which that interception direction applies to the designated interception centre concerned; or
- (ii) make available the necessary assistance and, subject to section 46(7)(b), the necessary facilities and devices to enable the authorised person concerned to effect the necessary connections in order to intercept any indirect communications to which the interception direction applies.

(2) If a real-time communication-related direction or an archived communication-related direction or a copy thereof is handed to the telecommunication service provider to whom the real-time communication-related direction or archived communication-related direction is addressed by the authorised person who executes that real-time communication-related direction or archived communication-related direction or assists with the execution thereof, the telecommunication service provider concerned must—

- (a) route the—
  - (i) real-time communication-related information specified in the real-time communication-related direction concerned immediately; or
  - (ii) archived communication-related information specified, and within the period stated, in the archived communication-related direction concerned,
 to the designated interception centre concerned; or
- (b) provide the—
  - (i) real-time communication-related information specified in the real-time communication-related direction concerned immediately; or
  - (ii) archived communication-related information specified, and within the period stated, in the archived communication-related direction concerned,
 to the law enforcement agency concerned, in the form as specified in that real-time communication-related direction or archived communication-related direction.

#### Assistance by decryption key holder

29. (1) If a decryption direction or a copy thereof is handed to the decryption key holder to whom the decryption direction is addressed by the authorised person who executes that decryption direction or assists with the execution thereof, the decryption key holder concerned must within the period stated in the decryption direction—

- (a) disclose the decryption key; or
- (b) provide the decryption assistance,

specified in the decryption direction concerned, to the authorised person concerned.

(2) In complying with a decryption direction, a decryption key holder—

- (a) must only disclose such decryption key or provide such decryption assistance which is necessary to obtain access to the encrypted information specified in that decryption direction or to put that encrypted information in an intelligible form;
- (b) may only disclose the decryption key or provide the decryption assistance to the authorised person who executes that decryption direction or assists with the execution thereof; and
- (c) may not disclose any other information, which is not specified in that decryption direction, relating to the customer in respect of whose encrypted information the decryption key has been disclosed or the decryption assistance has been provided.

(3) A decryption key holder to whom a decryption direction is addressed and who is in possession of both the encrypted information and the decryption key thereto—

- (a) may use any decryption key in his or her possession to provide decryption assistance; and
- (b) must, in providing such decryption assistance, make a disclosure of the encrypted information in an intelligible form.

(4) A decryption key holder who, in terms of a decryption direction, is required to provide decryption assistance in respect of any encrypted information, will be regarded as having complied with that requirement if he or she—

- (a) instead of providing such decryption assistance, discloses any decryption key to the encrypted information that is in his or her possession; and

- (b) makes such a disclosure, in accordance with the decryption direction concerned, to the authorised person to whom, and by the time by which, he or she was required to provide the decryption assistance.
- (5) If a decryption key holder to whom a decryption direction is addressed, is—
  - (a) not in possession of the encrypted information; or
  - (b) incapable, without the use of a decryption key that is not in his or her possession, to comply fully with that decryption direction,
 the decryption key holder concerned must endeavour to comply, to the best of his or her ability, with that decryption direction.
- (6) If a decryption key holder to whom a decryption direction is addressed, is in possession of different decryption keys, or combinations of decryption keys, to the encrypted information—
  - (a) it will not be necessary, for purposes of complying with the decryption direction concerned, for the decryption key holder to disclose any decryption keys in addition to those the disclosure of which, alone, is sufficient to enable the authorised person to whom they are disclosed to obtain access to the encrypted information and to put it into an intelligible form; or
  - (b) the decryption key holder may select which of the decryption keys, or combination of decryption keys, to disclose for purposes of complying with the decryption direction concerned.
- (7) If a decryption direction is addressed to a decryption key holder who—
  - (a) has been in possession of the decryption key to the encrypted information, but is no longer in possession thereof;
  - (b) if he or she had continued to have the decryption key in his or her possession, he or she would have been required by virtue of the decryption direction to disclose it; and
  - (c) is in possession of any information that would facilitate the obtaining or discovery of the decryption key or the provision of decryption assistance,
 he or she must disclose all such information as is in his or her possession to the authorised person who executes the decryption direction or assists with the execution thereof.
- (8) An authorised person to whom a decryption key has been disclosed under this section—
  - (a) may use the decryption key only in respect of the encrypted information, and in the manner and for the purposes, specified in the decryption direction concerned; and
  - (b) must, on or before the expiry of the period or extended period for which the decryption direction concerned has been issued, with the written approval of the applicant who made the application for the issuing of a decryption direction, destroy all records of the disclosed decryption key if, in the opinion of the applicant concerned—
    - (i) no criminal proceedings or civil proceedings as contemplated in Chapter 5 or 6 of the Prevention of Organised Crime Act, will be instituted in connection with such records; or
    - (ii) such records will not be required at any such criminal or civil proceedings for purposes of evidence or for purposes of an order of court.

## CHAPTER 5

### INTERCEPTION CAPABILITY AND COMPENSATION

#### **Interception capability of telecommunication services and storing of communication-related information**

- 30. (1) Notwithstanding any other law, a telecommunication service provider must—
  - (a) provide a telecommunication service which has the capability to be intercepted; and
  - (b) store communication-related information.
- (2) The Cabinet member responsible for communications, in consultation with the Minister and the other relevant Ministers and after consultation with the Authority and the telecommunication service provider or category of telecommunication service providers concerned, must, on the date of the issuing of a telecommunication service

licence under the Telecommunications Act, to such a telecommunication service provider or category of telecommunication service providers—

- (a) issue a directive in respect of that telecommunication service provider or category of telecommunication service providers, determining the—
    - (i) manner in which effect is to be given to subsection (1) by the telecommunication service provider or category of telecommunication service providers concerned; 5
    - (ii) security, technical and functional requirements of the facilities and devices to be acquired by the telecommunication service provider or category of telecommunication service providers to enable the— 10
      - (aa) interception of indirect communications in terms of this Act; and
      - (bb) storing of communication-related information in terms of subsection (1)(b); and
    - (iii) type of communication-related information which must be stored in terms of subsection (1)(b) and the period for which such information must be stored, which period may, subject to subsection (8), not be less than three years and not more than five years from the date of the transmission of the indirect communication to which that communication-related information relates; and 15
  - (b) determine a period, which may not be less than three months and not more than six months from the date on which a directive referred to in paragraph (a) is issued, for compliance with such a directive, and the period so determined must be mentioned in the directive concerned. 20
- (3) A directive referred to in subsection (2)(a)—
- (a) must, where applicable, prescribe the— 25
    - (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 30
    - (v) manner of routing real-time or archived communication-related information to designated interception centres in terms of section 28(2)(a); and
  - (b) may prescribe any other matter which the Cabinet member responsible for communications, in consultation with the Minister and the other relevant Ministers and after consultation with the Authority, deems necessary or expedient. 35
- (4) Notwithstanding any other law, agreement or licence, a telecommunication service provider must, subject to section 46(1)(a), at own cost acquire, whether by purchasing or leasing, the facilities and devices determined in a directive referred to in subsection (2)(a). 40
- (5) Any costs incurred by a telecommunication service provider under this Act in—
- (a) enabling—
    - (i) a telecommunication service to be intercepted; and
    - (ii) communication-related information to be stored, including the investment, technical, maintenance and operating costs; and 45
  - (b) complying with section 28(1)(b)(i) and (2)(a), must be borne by that telecommunication service provider.
- (6) A directive issued under subsection (2)(a) may in like manner be amended or withdrawn.
- (7) The Cabinet member responsible for communications must, within two months after the fixed date and in consultation with the Minister and the other relevant Ministers and after consultation with the Authority and a telecommunication service provider or category of telecommunication service providers to whom, prior to the fixed date, a telecommunication service licence has been issued under the Telecommunications Act— 50
- (a) issue a directive referred to in subsection (2)(a) in respect of such a telecommunication service provider or category of telecommunication service providers; and 55
  - (b) determine a period, which may not be less than three months and not more than six months from the date on which a directive referred to in paragraph (a) is issued, for compliance with such a directive, and the period so determined must be mentioned in the directive concerned. 60