

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

NO. R. 3424

19 May 2023

CERTIFICATE OF EXEMPTION IN TERMS OF SECTION 46(3) OF THE REGULATION OF INTERCEPTION OF COMMUNICATIONS AND PROVISION OF COMMUNICATION-RELATED INFORMATION ACT, 2002

I, Ronald Ozzy Lamola, Minister of Justice and Correctional Services, acting in terms of section 46 of the Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002 (Act No. 70 of 2002), and in consultation with the Cabinet members responsible for communications, defence, state security and policing, hereby, subject to the conditions set out in Part II of the Schedule, exempt the South African Police Service for a period of five years in respect of the categories of listed equipment set out in Column I of Item 1 and Item 2 of the Table in Part III of the Schedule (hereinafter referred to as "listed equipment"), from the prohibited acts specified opposite thereto in Column II of those Items of the Table.

R O LAMOLA
MINISTER OF JUSTICE AND CORRECTIONAL SERVICES

SCHEDULE**Part I****Definitions**

In this Schedule—

- (a) **"IMSI-catcher"** means equipment that—
- (i) intercepts signals being transmitted between mobile cellular apparatus and a mobile base-station (cell tower); or
 - (ii) presents itself as a mobile base-station to allow mobile cellular apparatus to connect to the IMSI-catcher;
- (b) **"Inspector-General of Intelligence"** means the person appointed in terms of section 7 of the Intelligence Services Oversight Act, 1994 (Act No. 40 of 1994);

- (c) "**National Commissioner**" means the National Commissioner of the South African Police Service contemplated in section 6(1) of the South African Police Service Act;
- (d) "**National Head of the Directorate**" means the National Head of the Directorate for Priority Crime Investigation contemplated in section 17C(2)(a) of the South African Police Service Act;
- (e) "**retired judge**" means the retired judge referred to in section 17L(1) of the South African Police Service Act;
- (f) "**South African Police Service Act**" means the South African Police Service Act, 1995 (Act No. 68 of 1995);
- (g) "**the Act**" means the Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002 (Act No. 70 of 2002); and
- (h) "**the Directorate**" means the Directorate for Priority Crime Investigation established in terms of section 17C of the South African Police Service Act.

Part II

Conditions of exemption

1. The listed equipment may only be possessed, purchased, manufactured, assembled and used to the extent authorised by the Act.
2. The National Commissioner must personally authorise the purchasing of—
 - (a) IMSI-catchers;
 - (b) any equipment reasonably necessary to be used with such IMSI-catchers; and
 - (c) any software to be installed on such IMSI-catchers or equipment reasonably necessary to be used with such IMSI-catchers.
3. All listed equipment and any equipment reasonably necessary to be used with such listed equipment must be marked with a non-alterable identification number.

4. The—
- (a) National Commissioner must designate a Divisional Commissioner; and
 - (b) National Head of the Directorate must designate a member of the Directorate, with at least the rank of Major-General, at national level who will be responsible and accountable for—
 - (i) the purchasing of listed equipment;
 - (ii) the manufacturing and assembling of listed equipment;
 - (iii) access control to listed equipment;
 - (iv) the issuing of written authorisations for the use of listed equipment as contemplated in paragraphs 8 and 9 of this Part;
 - (v) the keeping of consolidated records received in terms of paragraph 7(e) of this Part, of the use of listed equipment;
 - (vi) oversight over the use of listed equipment; and
 - (vii) compliance with the conditions determined in this certificate of exemption.
5. (a) The Divisional Commissioner referred to in paragraph 4(a) of this Part must—
- (i) in respect of any listed equipment in possession of the South African Police Service, obtain and keep a certificate from the manufacturer of the listed equipment or an appropriate expert who examined the listed equipment in which the interception capabilities of the listed equipment are specified; and
 - (ii) make such a certificate available to the Inspector-General of Intelligence on request.
- (b) The member of the Directorate referred to in paragraph 4(b) of this Part must—
- (i) in respect of any listed equipment in possession of the Directorate, obtain and keep a certificate from the manufacturer of the listed equipment or an appropriate expert who examined the listed equipment in which the interception capabilities of the listed equipment are specified; and

- (ii) make such a certificate available to the retired judge on request.
6. The Divisional Commissioner and member of the Directorate referred to in paragraph 4 of this Part must each—
- (a) at the end of each quarter of a financial year—
 - (i) cause an inspection to be performed at the places where the listed equipment is kept in order to verify compliance with the conditions of the certificate of exemption; and
 - (ii) submit a report to the National Commissioner and the National Head of the Directorate, as the case may be, which must contain the following information:
 - (aa) The number of authorisations that have been issued for the use of listed equipment during the period in question;
 - (bb) the categories of listed equipment that was used, the dates on which they were used and the purposes for which they were used;
 - (cc) the dates on which the secure places where the listed equipment is kept, were inspected and the particulars of the member who carried out the inspection;
 - (dd) any non-compliance with the conditions of this certificate of exemption which came to his or her attention; and
 - (ee) any loss or unauthorised use of listed equipment which came to his or her attention; and
 - (b) at the end of each financial year submit an inventory to the National Commissioner and the National Head of the Directorate, as the case may be, of all listed equipment in possession of the South African Police Service and the Directorate at the end of that financial year.
7. The following access-control and record keeping conditions are determined in respect of listed equipment:
- (a) The listed equipment must be kept in a secure place;

- (b) the Divisional Commissioner and member of the Directorate referred to in paragraph 4 of this Part, must each—
- (i) issue instructions to regulate the conditions and circumstances under which—
 - (aa) access to the secure places is authorised; and
 - (bb) listed equipment may be removed from the secure places;
 - (ii) designate specific members of the South African Police Service and the Directorate, respectively, who may—
 - (aa) access a secure place where the listed equipment is stored; and
 - (bb) remove the listed equipment on receipt of an authorisation in terms of paragraph 4(iv) of this Part, and hand the listed equipment over to an authorised person referred to in subparagraph (b)(iii); and
 - (iii) designate specific members of the South African Police Service and the Directorate, respectively, who are authorised to receive, be in possession and use the listed equipment;
- (c) records must be kept by a member referred to in subparagraph (b)(ii) of—
- (i) access to the listed equipment;
 - (ii) the identification numbers and descriptions of listed equipment and equipment used with such listed equipment that are furnished to an authorised person referred to in subparagraph (b)(iii) on receipt of a written authorisation referred to in paragraph 4(iv) of this Part;
 - (iii) the particulars of the authorised person referred to in subparagraph (b)(iii) who took possession of the listed equipment in terms of a written authorisation referred to in paragraph 4(iv) or a direction contemplated in paragraph 10 of this Part, the particulars of the authorisation or direction, the date and time on which the listed equipment was received by the authorised person against his or her signature and the particulars of the member referred to in subparagraph (b)(ii); and

- (iv) the date and time on which the listed equipment was returned to the member referred to in subparagraph (b)(ii), the particulars of that member, and the particulars of the authorised person referred to in subparagraph (b)(iii) who returned the listed equipment;
 - (d) on receiving the listed equipment as contemplated in subparagraph (c)(iv), the member referred to in subparagraph (b)(ii), must issue a receipt to the authorised person who returned the listed equipment, setting out the information referred to in subparagraph (c)(ii), (iii) and (iv), which receipt must be signed by both the member and the authorised person; and
 - (e) the member referred to in subparagraph (b)(ii), must at the end of each month submit a written report containing the information referred to in subparagraph (c) to the Divisional Commissioner or member of the Directorate contemplated in paragraph 4 of this Part, as the case may be.
8. The following conditions are determined where listed equipment is used to intercept communications in terms of sections 4(2) and 5(2) of the Act:
- (a) A written authorisation referred to in paragraph 4(iv) of this Part must be obtained prior to the use of listed equipment to intercept the communications;
 - (b) the Divisional Commissioner or member of the Directorate referred to in paragraph 4 of this Part, as the case may be, may only authorise the use of listed equipment if he or she is satisfied that there is compliance with these sections; and
 - (c) the authorised person referred to in paragraph 7(b)(iii) of this Part who used the listed equipment to intercept a communication must submit a written report, under oath or affirmation, to the Divisional Commissioner or member of the Directorate, as the case may be, which must—
 - (i) contain the following information:
 - (aa) The category of listed equipment used;
 - (bb) the date and time of activation of the listed equipment;
 - (cc) the date and time of deactivation of the listed equipment;
 - (dd) the type of communications that were intercepted;

- (ee) the nature and location of the facilities from which, or the place at which the communications were intercepted;
 - (ff) the identity of any person, if known, whose communications were intercepted and, where applicable, the electronic communications identifiers that were used to intercept the communications; and
 - (gg) where multiple authorised persons participated in the interception of communications by means of listed equipment under their physical control, the date, time and place and particulars of the authorised persons who respectively handed over and received the listed equipment and the functional status of the listed equipment;
- (ii) indicate whether or not the intercepted communications relate to a ground referred to in section 16(5)(a) of the Act; and
 - (iii) be accompanied by a copy of the written authorisation referred to in subparagraph (a) and the receipt referred to in paragraph 7(d) of this Part.
9. The following conditions are determined where listed equipment is used to intercept communications in terms of sections 7 of the Act:
- (a) A written authorisation referred to in paragraph 4(iv) of this Part must be obtained prior to the use of listed equipment to intercept communications;
 - (b) the Divisional Commissioner or member of the Directorate referred to in paragraph 4 of this Part, as the case may be, may only authorise the use of listed equipment if he or she is satisfied that there is compliance with the section;
 - (c) the authorised person referred to in paragraph 7(b)(iii) of this Part, who used listed equipment to intercept the communications, must in addition to the documents referred to in section 7(4) of the Act, submit an affidavit to the designated judge which must—
 - (i) contain the following information:

- (aa) The category of listed equipment used;
 - (bb) the date and time of activation of the listed equipment;
 - (cc) the date and time of deactivation of the listed equipment;
 - (dd) the type of communications that were intercepted;
 - (ee) the nature and location of the facilities from which, or the place at which the communications were intercepted;
 - (ff) the identity of any person, if known, whose communications were intercepted and, where applicable, the electronic communications identifiers that were used to intercept the communications; and
 - (gg) where multiple authorised persons participated in the interception of communications by means of listed equipment under their physical control, the date, time and place and particulars of the authorised persons who respectively handed over and received the listed equipment and the functional status of the listed equipment; and
- (ii) be accompanied by a copy of the written authorisation referred to in subparagraph (a) and the receipt referred to in paragraph 7(d) of this Part.
10. The following conditions are determined where listed equipment is to be used to intercept communications in terms of directions in terms of section 16, 17 or 18 of the Act:
- (a) An applicant, referred to in paragraph (a) of the definition of "applicant" in section 1(1) of the Act, who applies for an interception direction (as referred to in section 16 of the Act), a real-time communication-related direction (as referred to in section 17 of the Act), or a combination of an interception direction and real-time communication-related information direction (as referred to in section 18 of the Act), for the interception of communications referred to in those sections, must, if listed equipment is to be used to intercept those communications in the application—

- (i) specify the category of listed equipment that will be used to intercept the communications;
 - (ii) indicate the identification number of the listed equipment; and
 - (iii) provide the particulars of the authorised persons referred to in paragraph 7(b)(iii) of this Part who will—
 - (aa) use the listed equipment; or
 - (bb) subject to the issuing of an entry warrant in terms of section 22(3) of the Act, install and maintain the listed equipment at the premises,
to intercept the communications.
- (b) Authorised persons referred to in subparagraph (a)(iii), must within five days of the expiry of a direction, submit an affidavit to the designated judge which must—
- (i) contain the following information:
 - (aa) The category of listed equipment used;
 - (bb) the date and time of activation of the listed equipment;
 - (cc) the date and time of deactivation of the listed equipment;
 - (dd) the type of communications that were intercepted;
 - (ee) the nature and location of the facilities from which, or the place at which the communications were intercepted;
 - (ff) the identity of any person, if known, whose communications were intercepted and where applicable the electronic communications identifiers that were used to intercept the communications; and
 - (gg) where multiple authorised persons participated in the interception of communications by means of listed equipment under their physical control, the date, time and place and particulars of the authorised persons who respectively handed over and received the listed equipment and the functional status of the listed equipment; and

- (ii) be accompanied by a copy of the receipt referred to in paragraph 7(d) of this Part.
11. (a) The National Commissioner must immediately in writing report any loss or unauthorised use of any listed equipment reported to him or her in terms of paragraph 6(a)(ii)(ee) of this Part to the Cabinet member responsible for policing and the Inspector-General of Intelligence.
- (b) The National Head of the Directorate must in writing immediately report any loss or unauthorised use of any listed equipment reported to him or her in terms of paragraph 6(a)(ii)(ee) of this Part to the Cabinet member responsible for policing and the retired judge.
12. The Cabinet member responsible for policing must, not later than three months after the end of a financial year, submit an inventory to—
- (a) the Chairperson of the Joint Standing Committee on Intelligence;
- (b) the Inspector-General of Intelligence; and
- (c) the retired judge,
- of all listed equipment in possession of the South African Police Service as at the end of that financial year.
13. The Cabinet member responsible for policing must, not later than three months after the end of a financial year, table a report in Parliament containing the following information:
- (a) The number of authorisations that were issued for the use of listed equipment and the purposes for which those authorisations were issued;
- (b) the categories of listed equipment that were used in respect of these authorisations; and
- (c) any unauthorised use of listed equipment which came to his or her attention and steps that were taken in response thereto.

Part III**Categories of listed equipment and scope of exemption****Item 1**

Column I Categories of listed equipment	Column II Scope of exemption
<p>(a) Hardware keystroke recorders which record keystrokes of a keyboard of a computer device and either store the recorded information, or make the recorded information available to a pre-selected IP-address.</p> <p>(b) Night vision and thermal imaging apparatus.</p> <p>(c) Wiretaps used for the interception of indirect communications during the course of its transmission over a fixed systems (circuit- and packet- switched) electronic communications network (telephone communications).</p> <p>(d) Electronic amplified microphones that can be used to intercept direct communications with an effective interception range of less than 700 meters.</p> <p>(e) Laser interception devices that can be used to intercept direct</p>	<p>The South African Police Service is exempted from the prohibited acts, contemplated in section 45(1) of the Act, of possessing, purchasing, manufacturing and assembling of the equipment listed as items (a) to (m) in Column I.</p>

Column I Categories of listed equipment	Column II Scope of exemption
<p>communications with an effective interception range of less than 700 meters.</p> <p>(f) Miniature radio frequency transmitters that can be used to intercept direct communications.</p> <p>(g) Miniature recording devices that can be used to intercept direct communications.</p> <p>(h) Miniature video/audio cameras which—</p> <p>(i) record and store video/audio; or</p> <p>(ii) transmit video/audio.</p> <p>(i) Miniature cameras which—</p> <p>(i) record and store photographic images; or</p> <p>(ii) transmit photographic images.</p> <p>(j) Transmitters which can be used to monitor the location of a person or an object.</p> <p>(k) Any equipment that is reasonably necessary to be used with the equipment listed as items (a) to (j).</p> <p>(l) Any component of the equipment listed as items (a) to (k).</p> <p>(m) Any software that is necessary for the effective operation of the</p>	

Column I	Column II
Categories of listed equipment	Scope of exemption
equipment listed as items (a) to (k).	

Item 2

Column I	Column II
Categories of listed equipment	Scope of exemption
<p>(a) IMSI-catchers whose hardware and software configurations restrict its use to the intercept communication-related information.</p> <p>(b) Any component of an IMSI-catcher contemplated in item (a).</p> <p>(c) Any equipment, and any component thereof that is reasonably necessary to be used with an IMSI-catcher contemplated in paragraph in (a).</p> <p>(d) Any software that is necessary for the effective operation of—</p> <p style="margin-left: 20px;">(i) an IMSI-catcher contemplated in item (a); or</p> <p style="margin-left: 20px;">(ii) any equipment that is reasonably necessary to be used with an IMSI-catcher contemplated in item (a).</p>	<p>The South African Police Service is exempted from the prohibited acts contemplated in section 45(1) of the Act, of—</p> <p style="margin-left: 20px;">(i) possessing and purchasing of the equipment listed as items (a) to (d) in Column I; and</p> <p style="margin-left: 20px;">(ii) the assembling of the equipment listed as items (a) to (c), including the installation of the software listed in item (d) on the equipment listed as items (a) to (c), in Column I.</p>