

Assistance by postal service provider and telecommunication service provider

(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-

- (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,
- (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 designated interception centre concerned; or

to the law enforcement agency concerned, in the form as specified in that real-time communication-related direction or archived communication-related direction.

(1) (a) Any person who-

- (i) contravenes or fails to comply with section 6 (2), 7 (4), 8 (4), 29 (8), 42 (1) or 45 (1);

[Sub-para. (i) substituted by s. 3 (a) of Act 48 of 2008.]

- (ii) in any application made in terms of this Act, furnishes information or makes a statement, knowing such information or statement to be false, incorrect or misleading or not believing it to be correct;

- (iii) acts contrary to the authority of any direction issued under this Act or proceeds to act under any such direction knowing that it has expired;

- (iv) acts contrary to the authority of an entry warrant issued under this Act or, without being authorised thereto under an entry warrant, enters any premises for purposes of intercepting a postal article or communication, or installing and maintaining an interception device, on that premises;

- (v) forges or, with the intent to deceive, alters or tampers with any direction or entry warrant issued under this Act;

- (vi) furnishes particulars or information in any affidavit or report referred to in this Act, knowing such particulars or information to be false, incorrect or misleading or not believing it to be correct; or

- (vii) obstructs, hinders or interferes with an authorised person who executes any direction or entry warrant issued under this Act or assists with the execution thereof, in the exercising of his or her powers under that direction or entry warrant,

is guilty of an offence.

(b) Any person who is convicted of an offence referred to in-

- (i) paragraph (a) or in section 49 (1) or 54, is liable to a fine not exceeding R2 000 000 or to imprisonment for a period not exceeding 10 years; or

- (ii) section 52, 53 (1) or 55 (1), is liable to a fine or to imprisonment for a period not exceeding two years.

(2) (a) Any postal service provider or employee of a postal service provider who-

- (i) contravenes or fails to comply with section 28 (1) (a);

- (ii) contravenes or fails to comply with section 42 (2); or

- is guilty of an offence.
- (iii) performs an act contemplated in subsection (1) (a) (iii), (v) or (vii),
- (b) Any postal service provider or employee of a postal service provider who is convicted of an offence referred to in paragraph (a) is liable, in the case of-
- (i) a postal service provider who is a-
- (aa) natural person, to a fine not exceeding R2 000 000 or to imprisonment for a period not exceeding 10 years; or
- (bb) juristic person, to a fine not exceeding R5 000 000; or
- (ii) an employee, to a fine not exceeding R2 000 000 or to imprisonment for a period not exceeding 10 years.
- (3) (a) Any telecommunication service provider or employee of a telecommunication service provider who-
- (i) contravenes or fails to comply with section 7 (2), 8 (3), 28 (1) (b) or (2), 30 (1) or 39 (4);
- (ii) contravenes or fails to comply with section 30 (4);
- (iii) contravenes or fails to comply with section 7 (5), 8 (5), 39 (1) or (2) or 42 (2); or
- (iv) performs an act contemplated in subsection (1) (a) (iii), (v) or (vii),
- is guilty of an offence.
- (b) Any telecommunication service provider or employee of a telecommunication service provider who is convicted of an offence referred to in paragraph (a) or in section 50 (1), is liable, in the case of-
- (i) a telecommunication service provider who is a-
- (aa) natural person, to a fine not exceeding R2 000 000 or to imprisonment for a period not exceeding 10 years; or
- (bb) juristic person, to a fine not exceeding R5 000 000; or
- (ii) an employee, to a fine not exceeding R2 000 000 or to imprisonment for a period not exceeding 10 years.
- (3A) Any electronic communication service provider who fails to comply with-
- (a) the directives issued in terms of section 30 (2) (a);
- (b) section 40 (1), (2), (3), (4) or any determination made thereunder, (6), (7), (9)

- is guilty of an offence and liable on conviction to a fine not exceeding R100 000 for each day on which such failure to comply continues.
- [Sub-s. (3A) inserted by s. 3 (b) of Act 48 of 2008.]
- (3B) Any customer or person who fails to comply with section 40 (5) is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 12 months.
- [Sub-s. (3B) inserted by s. 3 (b) of Act 48 of 2008.]
- (3C) An employee or agent of an electronic communication service provider who fails to comply with section 40 (8), is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 12 months.
- [Sub-s. (3C) inserted by s. 3 (b) of Act 48 of 2008.]
- (3D) Any-
- (a) juristic person contemplated in section 62C (1); or
- (b) person contemplated in section 62C (2),
- who fails to comply with section 62C, is guilty of an offence and liable on conviction to a fine not exceeding R2 000 000 or to imprisonment for a period not exceeding 10 years.
- [Sub-s. (3D) inserted by s. 3 (b) of Act 48 of 2008.]
- (4) (a) Any decryption key holder or any employee of a decryption key holder who-
- (i) contravenes or fails to comply with section 29 (1);
- (ii) contravenes or fails to comply with section 29 (2), (3) (b), (5) or (7) or 42 (2); or
- (iii) performs an act contemplated in subsection (1) (a) (iii), (v) or (vii),
- is guilty of an offence.
- (b) Any decryption key holder or employee of a decryption key holder who is convicted of an offence referred to in paragraph (a) is liable, in the case of-
- (i) a decryption key holder who is a-
- (aa) natural person, to a fine not exceeding R2 000 000 or to imprisonment for a period not exceeding 10 years; or
- or (10); or

- (ii) an employee, to a fine not exceeding R2 000 000 or to imprisonment for a period not exceeding 10 years.
- (5) A conviction of an offence referred to in-
- (a) subsection (2) (a) (i) does not relieve any postal service provider or any employee of such a postal service provider of the obligation to comply with section 28 (1) (a);
- (b) subsection (3) (a) (i) or (ii) does not relieve any telecommunication service provider or any employee of such a telecommunication service provider of the obligation to comply with section 28 (1) (b) or (2), 30 (1) or (4) or 39 (4);
- (bA) subsection (3A) does not relieve any electronic communication service provider of the obligation to comply with-
- (i) the directives issued in terms of section 30 (2) (a);
- (ii) section 40 (1), (2), (3), (4) or any determination made thereunder, (6), (7), (9) or (10); or
- (iii) section 62 (6) (a), (b), (c) or (d); or
- [Para. (bA) inserted by s. 3 (c) of Act 48 of 2008.]
- (c) subsection (4) (a) (i) does not relieve any decryption key holder or any employee of such a decryption key holder of the obligation to comply with section 29 (1).
- (6) Notwithstanding anything to the contrary in any other law contained, a magistrate's court may impose any penalty provided for in this Act.
- (7) No person who-
- (a) in good faith assists an authorised person with the execution of a direction; and
- (b) believes on reasonable grounds that such authorised person is acting in accordance with such a direction,
- is liable to prosecution for a contravention of this Act.

The Cabinet member responsible for communications, after consultation with the Authority, may, in the case of a second or subsequent conviction of an electronic communication service provider of an offence referred to in section 51 (3) (a) (ii) and notwithstanding the imposition of any penalty prescribed by section 51 (3) (b), revoke the licence issued to the electronic communication service provider concerned under Chapter 3 of the Electronic Communications Act, to provide an electronic communications service.