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Fifth Session Eleventh Parliament Republic of
Trinidad and Tobago



REPUBLIC OF TRINIDAD AND TOBAGO

Act No. 13 of 2020

[L.S.]

AN ACT to amend the Interception of
Communications Act, Chap. 15:08

[Assented to 15th June, 2020]

ENACTED by the Parliament of Trinidad and Tobago as Enactment
follows:

1. This Act may be cited as the Interception of Short title
Communications (Amendment) Act, 2020.

- Commencement **2.** This Act comes into operation on such date as is fixed by the President by Proclamation.
- Interpretation
Chap. 15:08 **3.** In this Act, “the Act” means the Interception of Communications Act.
- Section 4A inserted **4.** The Act is amended by inserting after section 4, the following new section:
- “Application 4A. (1) This Act applies to—
- (a) criminal proceedings;
 - (b) proceedings under the Proceeds of Crime Act;
 - (c) proceedings under the Extradition (Commonwealth and Foreign Territories) Act;
 - (d) proceedings under the Anti-Terrorism Act; and
 - (e) proceedings under the Civil Asset Recovery and Management and Unexplained Wealth Act,
- unless the trial has commenced and is in progress on the coming into force of this Act.
- (2) For the avoidance of doubt, a trial is deemed to have commenced after the evidence has begun to have been led.
- (3) For the avoidance of doubt, all communications data obtained by a constable prior to the coming into force of this Act and lawfully obtained pursuant to section 32 or 33 of Proceeds of Crime Act or section 5 of the Indictable Offences (Preliminary Enquiry) Act shall continue to be admissible into evidence.
- (4) On the coming into force of this
- Chap. 11:27
- Chap. 12:04
- Chap. 12:07
- Act 8 of 2019
- Chap. 12:01

Act, the provisions of the Proceeds of Crime Act, the Administration of Justice (Indictable Proceedings) Act and the Act No. 20 of 2011 Indictable Offences (Preliminary Enquiry) Act relative to obtaining warrants under those Acts shall continue to apply.”.

5. Section 5 of the Act is amended by inserting in the Section 5 amended appropriate alphabetical sequence, the following definitions:

“address” includes a telephone number, an electronic location or a physical location;

“communications data” means any—

(a) traffic data comprised in or attached to a communication, whether by the sender or otherwise, for the purpose of any telecommunications network by means of which the communication is being or may be transmitted; or

(b) information, that does not include the contents of a communication, other than any data falling within paragraph (a), which is about the use made by any person—

(i) of any telecommunications network; or

(ii) of any part of a telecommunications network in connection with the provision to or use by, any person of any telecommunications service;

“device” means any electronic programmable apparatus used, whether by itself or as

part of a computer network, an electronic communications network or any other apparatus or equipment, or any part thereof, to perform pre-determined arithmetic, logical, routing or storage operations and includes—

- (a) an input device;
- (b) an output device;
- (c) a processing device;
- (d) a computer data storage medium;
- (e) a program; or
- (f) equipment,

that is related to, connected with or used with such a device or any part thereof;

“electronic location” includes any e-mail address, Internet Protocol address, website, or any other number or any designation used for the purpose of identifying any telecommunications network, device, custodian account or other electronic storage site;

“prison” includes—

- (a) the Port of Spain Prison;
- (b) the Golden Grove Prison;
- (c) the Maximum Security Prison, Golden Grove;
- (d) the Remand Prison, Golden Grove;
- (e) the Women’s Prison, Golden Grove;
- (f) the Eastern Correctional Rehabilitation Centre;
- (g) the Carrera Convict Prison;

- (h) the Tobago Convict Prison;
- (i) the Immigration Detention Centre;
- (j) a Rehabilitation Centre;
- (k) a holding cell at a police station or at a place of detention;
- (l) any other convict depot appointed, by Order, to be such by the Minister under section 4 of the Prisons Act; Chap. 13:01
- (m) any other place which the Minister may appoint as a prison, by Order, under sections 4, 5 and 6 of the Prisons Act; and
- (n) a place appointed by the President for the detention of a person under section 7 of the Constitution;

“proceedings” means proceedings referred to in section 4A;

“rehabilitation centre” has the meaning assigned to it in section 2 of the Children’s Community Residences, Foster Care and Nurseries Act; Chap. 46:04

“stored communication” means any communication or communications data which has been transmitted in whole or in part by a telecommunications network and is stored on any facility capable of retaining such communication or communications data;

“stored data” means any data of whatever description stored on a device;

“telecommunications service provider” means a person or entity who provides telecommunications service by means of a

public or private telecommunications network and all other providers of telecommunications services;

“traffic data”, in relation to a communication, means any data—

- (a) identifying, or purporting to identify, any person, apparatus or location to or from which the communication is or may be transmitted;
- (b) identifying or selecting, or purporting to identify or select, apparatus through or by means of which the communication is or may be transmitted;
- (c) comprising signals for the actuation of—
 - (i) apparatus used for the purpose of a telecommunications network for effecting, in whole or in part, the transmission of any communication; or
 - (ii) any telecommunications network in which that apparatus is comprised;
- (d) identifying the data or other data as comprised in or attached to a particular communication; or
- (e) identifying a computer file or computer programme, access to which is obtained or which is run by means of the communication, to the extent only that the file or programme is identified by reference to the apparatus in

which it is stored, and references to traffic data being attached to a communication include references to the data and the communication being logically associated with each other;”.

6. Section 6 of the Act is amended—

Section 6
amended

(a) by repealing subsection (1) and substituting the following subsection:

“(1) Except as provided in this section, a person who intentionally intercepts a communication in the course of its transmission by means of a telecommunications network commits an offence and is liable on—

(a) summary conviction, to a fine of five hundred thousand dollars and to imprisonment for seven years; or

(b) conviction on indictment, to a fine of one million dollars and to imprisonment for fifteen years.”;

(b) in subsection (2)—

(i) by deleting paragraph (b)(ii) and substituting the following paragraph:

“(ii) for the prevention or detection of an offence—

(A) under this Act; or

(B) for which the penalty on conviction is imprisonment for ten years or

more, and includes an offence where death, imprisonment for the remainder of a person's natural life or life imprisonment is the penalty fixed by law;";

- (ii) in paragraph (b), by deleting the words "but shall not be admissible as evidence in any criminal proceedings" and substituting the words "and may subject to section 17(2B) and (2C), be admissible as evidence in any proceedings";
- (iii) by deleting paragraph (f) and inserting the following paragraph:
 - "(f) the communication is a stored communication or communications data and is acquired in accordance with this Act or any other law;";
- (iv) in paragraph (g), by deleting the full stop and substituting the words "; or"; and
- (v) by inserting after paragraph (g), the following paragraph:
 - "(h) the interception is of a communication transmitted to or from a device in a prison or a vehicle used to transport prisoners, and the interception is conducted by an authorised officer—

- (i) in the interest of national security;
 - (ii) for the prevention or detection of an offence—
 - (A) under this Act; or
 - (B) for which the penalty on conviction is imprisonment for ten years or more, and includes an offence where death, imprisonment for the remainder of a person's natural life or life imprisonment is the penalty fixed by law;
 - (iii) for the purpose of safeguarding the economic well-being of the State; or
 - (iv) for the purpose of giving effect to the provisions of any international mutual assistance agreement.”.
- (c) in subsection (3), by deleting the words “The Court by which a person is convicted of an offence under this section” and substituting the words “Where a person is convicted of an offence under this section, the Court”; and
- (d) by inserting after subsection (5), the following subsection:

“(6) Exempt information under subsection (5) includes sensitive information and any other information not specified in section 24.”.

7. The Act is amended by inserting after section 6, the following sections: Sections 6A and 6B inserted

“Interception of communications from a prison and a vehicle used to transport prisoners 6A. (1) The Commissioner of Prisons shall cause all prisoners and members of staff of a prison to be informed that any communication transmitted to or from any device, which is in a prison or a vehicle used to transport prisoners may be intercepted under section 6(2)(h).

(2) Notwithstanding any law to the contrary, communications referred to in subsection (1) are not subject to legal professional privilege, unless the communications take place—

- (a) on a designated device; or
- (b) in such places within a prison as may be specified by the Minister, by Order.

Communications recorded in a prison or a vehicle used to transport prisoners 6B. (1) Communications within a prison or a vehicle used to transport prisoners may be recorded by an authorised officer—

- (a) in the interest of national security;
- (b) for the prevention or detection of an offence—
 - (i) under this Act; or
 - (ii) for which the penalty on conviction is imprisonment for five years or

more, and includes an offence where death, imprisonment for the remainder of a person's natural life or life imprisonment is the penalty fixed by law;

- (c) for the purpose of safeguarding the economic well-being of the State; or
- (d) for the purpose of giving effect to the provisions of any international mutual assistance agreement.

(2) Subsection (1) does not apply to such places within a prison as may be specified by the Minister, by Order.

(3) The Commissioner of Prisons shall cause all prisoners and members of staff of a prison to be informed that communications within the prison and vehicles used to transport prisoners may be recorded.

(4) Notwithstanding any law to the contrary, communications referred to in subsection (1) are not subject to legal professional privilege, unless the communications occur within such places within a prison as may be specified by the Minister under subsection (2).”.

8. Section 7 is amended—

Section 7 amended

- (a) in subsection (1), by inserting after the words “purchases,” the word “import”; and
- (b) in subsection (3), by inserting after the word “purchase”, the words “, import”.

Section 8 amended

9. Section 8 is amended—

(a) by deleting subsection (1) and substituting the following subsection:

“(1) Subject to this section, an authorised officer may apply, *ex parte*, to a Judge for a warrant—

(a) authorising the person named in the warrant—

(i) to intercept, in the course of their transmission by means of a public or private telecommunications network, such communications as are described in the warrant; and

(ii) to disclose the intercepted communication to such persons and in such manner as may be specified in the warrant;

(b) authorising the person named in the warrant to obtain stored communication from a telecommunications service provider and to disclose the stored communication to such persons and in such manner as may

be specified in the warrant; or

- (c) authorising the person named in the warrant to obtain stored data and to disclose the stored data to such persons and in such manner as may be specified in the warrant.”;

(b) in subsection (2)(a)—

- (i) in subparagraph (i), by deleting the word “or”;
- (ii) in subparagraph (ii), by inserting the word “or” after the words “committed;”; and
- (iii) by inserting after subparagraph (ii), the following subparagraph:

“(iii) for the purpose of rendering assistance under the Mutual Assistance in Criminal Matters Act or giving Chap. 11:24 effect to the provisions of any international mutual assistance agreement;”; and

(c) by deleting subsection (6) and substituting the following subsection:

“(6) A person who discloses the existence of a warrant or an application for a warrant, other than to a person to whom such disclosure is authorised for the purpose of this Act, commits an

offence and is liable on—

(a) summary conviction, to a fine of fifty thousand dollars and to imprisonment for three years; or

(b) conviction on indictment, to a fine of one million dollars and to imprisonment for fifteen years.”; and

(d) in the marginal note, by inserting after the word “interception”, the words “, stored communication or stored data”.

Section 9 amended

10. Section 9 of the Act is amended—

(a) by repealing subsection (1); and

(b) in subsection (4)—

(i) by inserting after the word “furnish”, the words “, at their own cost, such”; and

(ii) by inserting after the words “technical assistance”, the words “as may be”.

Section 11 amended

11. Section 11 of the Act is amended in subsection (1)—

(a) by inserting after the word “requires”, the words “, for the purposes of preventing or detecting the commission of an offence”;

(b) in paragraph (a), by inserting after the word “warrant” the words “under this section”; and

(c) by deleting paragraph (b) and substituting the following paragraph:

“(b) if satisfied of the matters referred to in section 8(2), he shall issue a

warrant authorising the person named in the warrant—

- (i) to intercept, in the course of their transmission by means of a public or private telecommunications network, such communications as are described in the warrant and to disclose the intercepted communication to such persons and in such manner as may be specified in the warrant; and
- (ii) to obtain stored communication from a telecommunications service provider and to disclose the stored communication to such persons and in such manner as may be specified in the warrant; or
- (iii) to obtain stored data and to disclose the stored data to such persons and in such manner as may be specified in the warrant.”.

12. Section 13 of the Act is amended—

Section 13 amended

- (a) in subsection (1), by deleting the words “interception warrants granted” and substituting the word “interceptions authorised”; and

(b) by inserting after subsection (3), the following subsection:

“(4) A person or entity which is required to provide assistance under subsection (1) or (2), shall bear the cost of providing that assistance.”.

Section 14 amended **12A.** The Act is amended in section 14—

(a) in paragraph (a)—

(i) in subparagraph (i), by inserting after the words “intercepted communication” the words “, stored communication or stored data”; and

(ii) in subparagraphs (ii), (iii) and (iv), by deleting the word “communication” and substituting the words “intercepted communication, stored communication or stored data”; and

(b) in paragraph (b), by deleting the word “communication” and substituting the words “intercepted communication, stored communication or stored data”.

Section 15 amended **13.** Section 15 of the Act is amended in subsection (1)—

(a) by inserting after the words “virtue of a warrant”, the words “issued under this Act or any other written law”;

(b) by inserting the word “authorised” after the words “and the”; and

(c) by inserting the word “authorised” before the words “officer may”.

Section 16 amended **14.** Section 16 of the Act is amended in subsection (1)—

(a) in paragraph (a), by deleting the word “and”;

- (b) in paragraph (b), by deleting the full-stop and substituting the words “; and”; and
- (c) by inserting after paragraph (b), the following paragraph:

“(c) shall securely retain the key and issue a certificate stating that he used a key in his possession to obtain access to the protected communication.”.

15. Section 17 of the Act is amended—

Section 17 amended

- (a) by repealing subsection (1) and substituting the following subsection:

“(1) In this section and in section 19, “sensitive information” means—

- (a) an application for a warrant pursuant to section 8 or 11 or any related application or statutory declaration, notice, any other related document or Court order or other document made or issued under this Act;
- (b) an application for a warrant for the purpose of obtaining communications data or stored communication or any related application or statutory declaration or Court order or other document made or issued under this Act or any other written law;
- (c) information relating to

the method of interception
or the obtaining of
communications data or
stored communication;
or

(d) any other information
that suggests or tends to
suggest—

(i) any of the
details pertaining
to the method
by which the
communication
was intercepted
or the commu-
nications data
or stored com-
munication was
obtained; or

(ii) the identity of
any party carrying
out or assisting
in the interception
or the obtaining
of the communi-
cations data.”;

(b) in subsection (2), by inserting the word “a”
before the word “warrant” and deleting the
word “criminal”;

(c) by inserting after subsection (2), the
following subsections:

“(2A) The contents of a commu-
nication obtained by interception
under section 6(2)(c), (d), (e), (f) or
(g) shall be admissible as evidence
in any proceedings where the
Judge is satisfied that it would be
in the interests of justice to so
admit them.

(2B) The contents of a communication that is obtained—

(a) by interception permitted by section 6(2)(b) or section 6(2)(h); or

(b) pursuant to section 6B,

shall be admissible in evidence in any proceedings where the Judge is satisfied that it would be in the interests of justice to so admit it.

(2C) In making a decision under subsections (2A) and (2B), the Judge shall consider all the circumstances concerning the obtaining of the communication, including communications data and stored communication obtained under section 8, whether the defendant was induced to say what he did and any other relevant factors which would render what he said unreliable and he shall consider, in respect of the communications, that—

(a) nothing was done to induce or trick the accused or defendant into saying something;

(b) the integrity of any recording or interception is sound;

(c) the use of the recording or interception device was proportionate to the gravity of the alleged or suspected offence;

(d) the use of the method

was appropriately authorised by an officer independent of the investigation; and

- (e) no recording or interception of any conversation subject to legal professional privilege occurred in a place specified by the Minister under section 6B (2).”;
- (d) in subsection (3), by deleting the word “criminal”; and
- (e) by repealing subsections (4) and (5) and substituting the following subsection:

“(4) In any proceedings—

- (a) no evidence shall be adduced and no question shall be asked of any witness that suggests or tends to suggest the disclosure of sensitive information, except with the express leave of the Court hearing the proceedings;
- (b) the Court shall not grant leave in relation to any evidence or question referred to in paragraph (a), unless it is satisfied by the party challenging the evidence that it would be relevant to—
 - (i) the validity and lawfulness of the warrant;

(ii) the accuracy and integrity of the intercepted communication;
or

(iii) the accuracy and integrity of the communications data,

and that a refusal may render unsafe a conclusion of the jury or the Court, as the case may be, on any relevant issue in the case;

(c) a statement by a witness that the interception of the communication which is to be produced in evidence before the Court was permitted by any of the provisions of section 6(2)(a) or (h) shall be sufficient evidence that it was so permitted, unless the Court has given leave for the disclosure of sensitive information and documents concerning the granting of the warrant or other authorisation or lawful justification of the interception;

(d) a statement by a witness that the

intercepted communication, which is to be produced in evidence before the Court, was obtained pursuant to a warrant permitting the interception of communications between or from such addresses as specified in the statement shall be sufficient evidence of the source and origin of the communication, unless the Court has given leave for sensitive information to be led in evidence as to how, when or by whom the interception was accomplished; and

- (e) a statement by a witness that any document containing or concerning an intercepted communication—
 - (i) is, or forms part of, a record of a trade or business shall be sufficient evidence that the document is admissible in accordance with section 14 of the Evidence Act; or
 - (ii) was produced

by a computer shall, subject to section 14B of the Evidence Act be admissible as evidence,

unless the Court has given leave for sensitive information and documents concerning the granting of the warrant or other authorisation or lawful justification of the interception to be led in evidence as to how, when or by whom the interception was accomplished.”.

16. The Act is amended by inserting after section 17, Section 17A inserted the following section:

“Disclosure of sensitive information in closed proceedings, and Special Advocates 17A. (1) Where the Court considers it appropriate to determine whether sensitive information should be disclosed, the Court shall issue a special measure direction that closed proceedings be utilised.

(2) Where a special measure direction is issued by the Court, no person other than the Judge or the prosecution acting in the proceedings, the Court Interpreter or any other person who may be required to assist the Court in the conduct of its proceedings and the Special Advocate, representing the interests of the accused or the defendant, as the case may be, shall be present in the courtroom during the closed proceedings.

(3) A person involved in closed proceedings under subsection (1), shall be approved by the Court.

(4) In this section, “Special Advocate” means an attorney-at-law—

- (a) appointed by the Court to represent the interests of the accused or the defendant, as the case may be, in closed proceedings;
- (b) who acts in the interest of justice; and
- (c) whose function is to represent the interests of the accused or the defendant, as the case may be, by making submissions to the Court, adducing evidence and cross-examining witnesses, making applications to the Court, seeking directions from the Court, and generally assisting the Court.”.

Section 18 amended **17.** Section 18 of the Act is amended—

- (a) by repealing subsection (1);
- (b) in subsection (2)—
 - (i) by deleting the words “person providing a telecommunications service” and substituting the words “telecommunications service provider”;
 - (ii) in the chapeau, by inserting the words “telecommunications service” before the word “provider”; and
 - (iii) in paragraph (b), by inserting the words “telecommunications service” before the word “provider”;

- (c) in subsection (6), by deleting the words “provider of a telecommunications service” and substituting the words “telecommunications service provider”; and
- (d) in subsection (7), by inserting the word “telecommunications” before the words “service provider”, wherever it occurs.

17A. The Act is amended by inserting after section 18, the following section: Section 18A inserted

“Power to obtain communications data or stored communication by a search warrant 18A. (1) Nothing in section 8, 11 or 18 shall affect the power of a constable to obtain a warrant or production order under any other written law for the purpose of obtaining any communications data or stored communication which may be in the possession of a person or entity.

(2) Sections 13 and 14 shall apply with the necessary modifications, for the purpose of obtaining communications data or stored communication, pursuant to a warrant referred to in subsection (1).

(3) Subject to subsections (4) and (5), the person or entity who has been served with a warrant referred to in subsection (1) and any individual associated with that person or entity, shall not disclose to any person the existence or operation of the warrant or any information from which the existence or operation of the warrant could reasonably be inferred.

(4) The disclosure referred to in subsection (3) may be made to—

- (a) an officer or agent of the person or entity for the purpose of ensuring that

the warrant is complied with; or

- (b) an Attorney-at-law for the purpose of obtaining legal advice or representation in relation to the warrant.

(5) An Attorney-at-law referred to in subsection (4)(b) shall not disclose the existence or operation of a warrant referred to in subsection (1) except to the extent necessary for the purpose of his duties as an Attorney-at-law.

(6) A constable shall not disclose any communications data or stored communication obtained pursuant to this section, except—

- (a) to the Commissioner of Police;
- (b) in connection with the performance of his duties;
- (c) if the Minister directs such disclosure to a foreign government or agency of such government, where there exists between the State and such foreign government an agreement for the mutual exchange of that kind of information and the Minister considers it in the public interest that such disclosure be made; or
- (d) for the purposes of criminal proceedings.

(7) The Commissioner of Police shall not disclose any communications

data or stored communication obtained pursuant to this section, except—

- (a) in connection with the performance of his duties; or
- (b) if the Minister directs such disclosure to a foreign government or agency of such government, where there exists between the State and such foreign government an agreement for the mutual exchange of that kind of information and the Minister considers it in the public interest that such disclosure be made.

(8) A person who contravenes subsections (3), (4), (5), (6) or (7) commits an offence and is liable on summary conviction to a fine of three hundred thousand dollars and to imprisonment for five years.”.

18. Section 19 of the Act is amended—

Section 19 amended

- (a) in the marginal note, by inserting after the word “data”, the words “stored communication and stored data”;
- (b) in subsection (1)—
 - (i) by inserting after the word “data”, the words “or stored communication”;
 - and
 - (ii) by inserting after the words “section 18”, the words “, or stored data”;
- (c) by repealing subsections (2) and (3) and substituting the following subsection:

“(2) In admitting into evidence any communications data, stored communication or stored data referred to in subsection (1)—

- (a) no evidence shall be adduced and no question shall be asked of any witness that suggests or tends to suggest the disclosure of sensitive information except with the leave of the Court hearing the proceedings;
- (b) the Court shall not grant leave in relation to such evidence or question, unless it is satisfied that it would be relevant to an issue in the case and that a refusal might render unsafe a conclusion of the jury or, as the case may be, the Court on any relevant issue in the case;
- (c) a statement by a witness that the data, which is to be produced in evidence before the Court, was obtained by an authorised officer pursuant to an order under section 15 or a notice under section 18 shall be sufficient evidence of the source

and origin of the data unless the Court has given leave for the sensitive information and documents concerning the granting of the warrant, to be led in evidence as to how, when or by whom the data was obtained; and

(d) a statement by a witness that any document containing or concerning communications data, traffic data or a stored communication—

(i) is, or forms part of, a record of a trade or business shall be sufficient evidence that the document is admissible in accordance with section 14 of the Evidence Act; or

(ii) was produced by a computer shall, subject to section 14B of the Evidence Act, be admissible as evidence,

unless the Court has given leave for sensitive information and documents

concerning the granting of the warrant or order to be led into evidence as to how, when or by whom the data was obtained.”.

Section 20 amended

19. Section 20 of the Act is amended—

(a) in subsection (1)—

(i) by deleting the word “An” and inserting before the words “authorised”, the words “Subject to subsection (9), an”; and

(ii) by inserting after the words “section 8 or 11”, the words “or pursuant to an order under section 15 or a notice under section 18” or pursuant to any other written law.

(b) in subsection (2), by inserting after the words “section 8 or 11”, the words “or pursuant to an order under section 15 or a notice under section 18”;

(c) in subsection (5), by deleting the word “An” and inserting before the words “authorised”, the words “Subject to subsection (9), an”; and

(d) by inserting after subsection (7), the following subsections:

“(8) For the purpose of this section, a record of information shall be related to the objective of the interception of communication if it includes, not only material concerning an offence but also information which assists in—

(a) identifying the sender or recipient of the

communication or the apparatus being used by the sender or recipient;

(b) placing the communication in context or otherwise assists in explaining it; and

(c) proving a link between the sender and the recipient and between either of them with a third party.

(9) Information which may reveal the commission of other offences by other people or which may jeopardise other enquiries shall not be disclosed to the accused but shall be retained and be the subject of a public interest immunity application to the Court by the prosecution.”.

20. Section 21 of the Act is amended by inserting after the word “officer”, the words “or an officer authorised under section 5(2)” Section 21 amended.

21. Section 23 of the Act is amended— Section 23 amended

(a) in subsection (3), by deleting the word “criminal”; and

(b) in subsection (6), by inserting after the words “section 8 or 11”, the words “or pursuant to a warrant under any other written law.

22. The Act is amended by inserting after section 23, Section 23A inserted the following section:

“Tipping off 23A. (1) A person commits an offence if—

(a) he knows or suspects that an

authorised officer or an officer authorised by him under section 5(2) is acting, or is proposing to act, in connection with an interception which is being or is about to be conducted; and

- (b) he discloses to any other person information or any other matter which is likely to prejudice any investigation which may be connected or related to the interception.

(2) A person who knowingly attempts, aids, abets, conspires, procures or otherwise facilitates the commission of an offence under subsection (1) commits an offence.

(3) A person who commits an offence under subsections (1) or (2) is liable—

- (a) on summary conviction, to a fine of five million dollars and to imprisonment for five years; or
- (b) on conviction on indictment, to a fine of twenty-five million dollars and to imprisonment for fifteen years.

(4) In proceedings against a person for an offence under subsection (1), it is a defence to prove that he did not know or suspect that the disclosure was likely to be prejudicial.”.

Section 25 amended

23. Section 25 of the Act is amended by inserting after subsection (2), the following subsection:

“(3) Regulations made under this section may provide that the contravention of any regulation constitutes an offence and may prescribe penalties for any offence not exceeding a fine of two hundred and fifty thousand dollars and imprisonment for two years.”.

24. The Act is amended by inserting after section 25, Section 25A inserted the following section:

“Power to make Rules Chap. 4:01 25A. The Rules Committee of the Supreme Court established by the Supreme Court of Judicature Act may, subject to negative resolution of Parliament, make Rules to govern proceedings under this Act.”.

25. Schedule 1 to the Act is amended by deleting the Schedule 1 amended words “intercepted communication” and substituting the words “[intercepted communication/stored communication/stored data]”.

26. Schedule 2 to the Act is amended by deleting the Schedule 2 amended words “in respect of communications”, and substituting the words “in respect of [communications/stored communication/stored data]”.

27. The Proceeds of Crime Act is amended by insert- Chap.11:27 amended ing after section 33, the following new section:

“Non-disclosure of warrants Chap. 15:08 33A. (1) The provisions of sections 13 and 14 of the Interception of Communications Act for the purposes of obtaining communications data or stored communications pursuant to a warrant, shall apply to this Act.

(2) Subject to subsections (3) and (4), the person or entity who has been served with a warrant under section 33 and any individual associated with the

warrant shall not disclose to any person the existence or operation of the warrant or any information from which such existence or operation could reasonably be inferred.

(3) The disclosure referred to in subsection (2) may be made to—

- (a) an officer or agent of the person or entity for the purpose of ensuring that the warrant is complied with; or
- (b) an Attorney-at-law for the purpose of obtaining legal advice or representation in relation to the warrant.

(4) An Attorney-at-law referred to in subsection (3)(b) shall not disclose the existence or operation of a warrant referred to in section 33 except to the extent necessary for the purpose of his duties as an Attorney-at-law.

(5) A constable shall not disclose any communications data or stored communication obtained pursuant to this section, except—

- (a) to the Commissioner of Police;
- (b) in connection with the performance of his duties;
- (c) if the Minister directs such disclosure to a foreign government or agency of such government, where there exists between the State and such foreign government an agreement for the mutual exchange of that kind of information and the

Minister considers it in the public interest that such disclosure be made; or

(d) for the purposes of criminal proceedings.

(6) The Commissioner of Police shall not disclose any communications data or stored communication obtained pursuant to this section, except—

(a) in connection with the performance of his duties; or

(b) if the Minister directs such disclosure to a foreign government or agency of such government, where there exists between the State and such foreign government an agreement for the mutual exchange of that kind of information and the Minister considers it in the public interest that such disclosure be made.

(7) A person who contravenes subsections (2), (3), (4), (5) or (6) commits an offence and is liable on summary conviction to a fine of three hundred thousand dollars and to imprisonment for five years.

(8) In this section, “communications data” and “stored communications” have the meanings assigned to them under section 5 of the *Interception of Communications Act*.”.

28. The *Indictable Offences (Preliminary Enquiry)* Chap. 12:01 Act is amended by inserting after section 5, the amended following new section:

Non-disclosure
of warrants
Chap. 15:08

5A. (1) The provisions of sections 13 and 14 of the Interception of Communications Act for the purposes of obtaining communications data or stored communications pursuant to a warrant shall apply to this Act.

(2) Subject to subsections (3) and (4), the person or entity who has been served with a warrant under section 5 and any individual associated with the warrant, shall not disclose to any person the existence or operation of the warrant or any information from which such existence or operation could reasonably be inferred.

(3) The disclosure referred to in subsection (2) may be made to—

- (a) an officer or agent of the person or entity for the purpose of ensuring that the warrant is complied with; or
- (b) an Attorney-at-law, for the purpose of obtaining legal advice or representation in relation to the warrant.

(4) An Attorney-at-law referred to in subsection (3)(b) shall not disclose the existence or operation of a warrant referred to in section 5 except to the extent necessary for the purpose of his duties as an Attorney-at-law.

(5) A constable shall not disclose any communications data or stored communication obtained pursuant to this section, except—

- (a) to the Commissioner of Police;
- (b) in connection with the performance of his duties;

(c) if the Minister directs such disclosure to a foreign government or agency of such government, where there exists between the State and such foreign government an agreement for the mutual exchange of that kind of information and the Minister considers it in the public interest that such disclosure be made; or

(d) for the purposes of criminal proceedings.

(6) The Commissioner of Police shall not disclose any communications data or stored communication obtained pursuant to this section, except—

(a) in connection with the performance of his duties; or

(b) if the Minister directs such disclosure to a foreign government or agency of such government, where there exists between the State and such foreign government an agreement for the mutual exchange of that kind of information and the Minister considers it in the public interest that such disclosure be made.

(7) A person who contravenes subsections (2), (3), (4), (5) or (6) commits an offence and is liable on summary conviction to a fine of three hundred thousand dollars and to imprisonment for five years.

(8) In this section “communications data” and “stored communications” have the meanings assigned to them under section 5 of the Interception of Communications Act.”.

Act No. 20 of 2011
amended

29. The Administration of Justice (Indictable Proceedings) Act is amended by inserting after section 5, the following new section:

“Non-disclosure of warrants Chap. 15:08 5A. (1) The provisions of sections 13 and 14 of the Interception of Communications Act for the purposes of obtaining communications data or stored communications pursuant to a warrant shall apply to this Act.

(2) Subject to subsections (3) and (4), the person or entity who has been served with a warrant under section 5 and any individual associated with the warrant, shall not disclose to any person the existence or operation of the warrant or any information from which such existence or operation could reasonably be inferred.

(3) The disclosure referred to in subsection (2) may be made to—

(a) an officer or agent of the person or entity for the purpose of ensuring that the warrant is complied with; or

(b) an Attorney-at-law, for the purpose of obtaining legal advice or representation in relation to the warrant.

(4) An Attorney-at-law referred to in subsection (3)(b) shall not disclose the existence or operation of a warrant referred to in section 5 except to the extent necessary for the purpose of his duties as an Attorney-at-law.

(5) A constable shall not disclose any communications data or stored communication obtained pursuant to this section, except—

- (a) to the Commissioner of Police;
- (b) in connection with the performance of his duties;
- (c) if the Minister directs such disclosure to a foreign government or agency of such government, where there exists between the State and such foreign government an agreement for the mutual exchange of that kind of information and the Minister considers it in the public interest that such disclosure be made; or
- (d) for the purposes of criminal proceedings.

(6) The Commissioner of Police shall not disclose any communications data or stored communication obtained pursuant to this section, except—

- (a) in connection with the performance of his duties; or
- (b) if the Minister directs such disclosure to a foreign government or agency of such government, where there exists between the State and such foreign government an agreement for the mutual exchange of that kind of information and

the Minister considers it in the public interest that such disclosure be made.

(7) A person who contravenes subsections (2), (3), (4), (5) or (6) commits an offence and is liable on summary conviction to a fine of three hundred thousand dollars and to imprisonment for five years.

(8) In this section “communications data” and “stored communications” have the meanings assigned to them under section 5 of the Interception of Communications Act.”.

Passed in the Senate this 3rd day of March, 2020.

B. CAESAR
Clerk of the Senate

Passed in the House of Representatives this 29th day of May, 2020.

J. SAMPSON-MEIGUEL
Clerk of the House

House of Representatives amendments were agreed to by the Senate this 3rd day of June, 2020.

B. CAESAR
Clerk of the Senate