



357

No. 31]

Interception of Communications Act

[2005.

SAINT LUCIA

No. 31 of 2005

ARRANGEMENT OF CLAUSES

PART I

PRELIMINARY

Section

1. Short title and commencement
2. Interpretation

PART II

INTERCEPTION OF COMMUNICATIONS

3. Prohibition of interception
4. Application for interception direction and unauthorised disclosure of application
5. Issuance of interception direction
6. Scope and form of interception direction
7. Duration and renewal of interception direction
8. Application, issuance, form and scope of entry warrant
9. Termination of interception direction or entry warrant
10. Urgent application, issuance, form and scope of interception direction or entry warrant
11. Modification of interception direction and entry warrant
12. Reports on progress
13. Protection for acts done in good faith

PART III

EXECUTION OF INTERCEPTION DIRECTIONS
AND ENTRY WARRANTS

14. Execution of interception direction or entry warrant
15. Entry on premises for execution of entry warrant
16. Duty to provide assistance
17. Confidentiality of intercepted communications
18. Exclusion of matters from legal proceedings
19. Exceptions to section 18
20. Offence for unauthorised disclosure of interception

PART IV

PROTECTED INFORMATION

21. Order requiring disclosure of protected information
22. Effects of disclosure order
23. Tipping-off

PART V

COMMUNICATIONS DATA

24. Disclosure of communications data
25. Admissibility of communications data

PART VI

LISTED EQUIPMENT

26. Listed equipment
27. Prohibition on manufacture, possession and advertising of listed equipment
28. Exemptions
29. Offence for contravention of section 27

PART VII

TRIBUNAL

30. Establishment of Tribunal
31. Exercise of the Tribunal's jurisdiction
32. Tribunal procedure
33. Tribunal rules

PART VIII

MISCELLANEOUS

34. Amendment of Schedule
35. False statements
36. Regulations
37. Code of conduct

SCHEDULE



359

No. 31]

Interception of Communications Act

[2005.

I ASSENT

[L.S.]

PEARLETTE LOUISY,
Governor-General.

12th November, 2005.

SAINT LUCIA

No. 31 of 2005

AN ACT to provide for the interception of communications and the provision of information relating to interception in Saint Lucia and for related matters.

[On Order]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly and the Senate of Saint Lucia, and by the authority of the same as follows:



PART I
PRELIMINARY

Short title and commencement

1.— (1) This Act may be cited as the Interception of Communications Act 2005.

(2) This Act shall come into force on a date to be fixed by the Minister by Order published in the *Gazette*.

Interpretation

2.— (1) In this Act —

“attorney-at-law” has the meaning given to it pursuant to the Legal Professions Act 2000, No. 31 of 2000;

“authorised officer” means —

- (a) the Commissioner of Police;
- (b) the Director of the Financial Intelligence Authority;
- (c) the Comptroller of Customs;
- (d) a person for the time being lawfully exercising the functions of a person stated in paragraphs (a) to (c);
- (e) a person authorised in writing to act on behalf of a person mentioned in paragraphs (a) to (c);

“Commissioner of Police” means the Commissioner of Police appointed pursuant to the Constitution;

“communication” includes —

- (a) except in the definition of “postal service”, anything transmitted by means of a postal service including a postal article;
- (b) anything comprising speech, music, sounds, visual images or data of any description; and
- (c) signals serving either for the impartation of anything between persons, between a person and a thing or between things or for the actuation or control of any apparatus;

“communications data” means any —

- (a) traffic data comprised in or attached to a communication, whether by the sender or otherwise, for the purposes of any



postal service or telecommunications network by means of which the communication is being or may be transmitted;

- (b) information, that does not include the contents of a communication, other than data falling within paragraph (a) which is about the use, made by any person-
 - (i) of any postal service or 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; and
- (c) information not falling within paragraph (a) or paragraph (b) that is held or obtained, in relation to persons to whom he or she provides the service, by a person providing a postal or a telecommunications service;

“Director of the Financial Intelligence Authority” means the Director of the Financial Intelligence Authority appointed pursuant to the Financial Intelligence Authority Act 2002, No.17 of 2002;

“Director of Public Prosecutions” means the Director of Public Prosecutions appointed pursuant to the Constitution;

“disclosure order” means an order made pursuant to section 21, requiring access to electronic data;

“electronic signature” means anything in electronic form —

- (a) is incorporated into, or otherwise logically associated with, any electronic communication or other electronic data;
- (b) is generated by the signatory or other source of the communication or data; and
- (c) is used for the purpose of facilitating, by means of a link between the signatory or other source and the communication or data, the establishment of the authenticity of the communication or data, and the establishment of its integrity or both;

“entry warrant” means a warrant issued pursuant to section 8 and section 10;

“Financial Intelligence Authority” means the Financial Intelligence Authority established pursuant to the Financial Intelligence Authority Act 2002, No.17 of 2002;

“intercept” includes —



- (a) aural or other acquisition of the contents of a communication through the use of any means, including an interception device, so as to make some or all of the contents of a communication available to a person other than the sender or recipient or intended recipient of that communication;
- (b) monitoring a communication by means of a monitoring device;
- (c) viewing, examining, or inspecting the contents of a communication; and
- (d) diverting of any communication from its intended destination to any other destination;

and “interception” shall be construed accordingly;

“intercepted communication” means a communication which during the course of its transmission by means of a postal service or a telecommunication network is intercepted;

“interception device” means any electronic, mechanical or other instrument, device, equipment or apparatus which is used or can be used, whether by itself or in combination with any other instrument, device, equipment or apparatus to intercept any communication but does not mean any instrument, device, equipment or apparatus, or any component thereof-

- (a) furnished to a customer by a telecommunications provider in the ordinary course of business and being used by the customer in the ordinary course of his or her business;
- (b) furnished by a customer for connection to the facilities of a telecommunications service and being used by the customer in the ordinary course of business; or
- (c) being used by a telecommunications provider in the ordinary course of business;

“interception direction” means an interception direction issued pursuant to section 5 or 10;

“Judge” means a Judge of the High Court;

“key” in relation to electronic data, means a key, code, password, algorithm or other data the use of which, (with or without keys) —

- (a) allow access to the electronic data; or
- (b) facilitates the putting of the electronic data into an intelligible form;



“listed equipment” means —

- (a) any equipment declared to be listed equipment pursuant to section 26; or
- (b) a component of equipment referred to in paragraph (a);

“Minister” means the Minister responsible for national security;

“person” means a body corporate or an unincorporated body;

“Police Force” means the Royal Saint Lucia Police Force established pursuant to the Police Ordinance 1965, No. 30 of 1965;

“postal article” means —

- (a) any form of written communication, or any other document or article —
 - (i) that is addressed to a specific person or a specific address; and
 - (ii) that is to be conveyed other than by electronic means; and
 - (iii) for which a charge, inclusive of tax, is made in respect of carrying, taking charge of, or sending it; or
- (b) an envelope, packet, package, or wrapper containing a communication, document or article;

“postal provider” means a person who provides a postal service;

“postal service” means a service which —

- (a) consists of the following, or in one or more of them, namely the collection, sorting, conveyance, distribution and delivery whether in Saint Lucia or elsewhere, of postal articles; and
- (b) is offered or provided as a service the main purpose of which, or one of the main purposes of which, is to make available, or to facilitate, by means of transmission from place to place of postal articles containing communications;

“prescribed” means prescribed in the Regulations;

“private telecommunications network” means a telecommunications network that, without it being a public telecommunications network, is a telecommunications network in relation to which the following conditions are satisfied —

- (a) it is attached, directly or indirectly and whether or not for the purposes of the communication in question, to a public telecommunications network; and



(b) there is apparatus comprised in the telecommunications network which is both located in Saint Lucia and used, with or without other apparatus, for making the attachment to the public telecommunications network;

“protected information” means electronic data which, without a key, cannot or cannot readily be accessed or put in an intelligible form;

“public postal service” means any postal service which is offered or provided to the public or to a substantial section of the public in Saint Lucia;

“public telecommunications network” means —

(a) a telecommunications network commonly known as a public switched telephone network;

(b) a telecommunications network used by any person to provide telecommunications services to the public; or

(c) a telecommunications network whereby the public can send or receive telecommunications service to or from —

(i) anywhere in Saint Lucia; or

(ii) anywhere outside Saint Lucia;

“Regulations” means Regulations made pursuant to section 36;

“telecommunications provider” means a person who operates a telecommunications network or who provides a telecommunications service;

“telecommunications network” means any wire, radio, optical or other electromagnetic system used to route switch or transmit telecommunications;

“telecommunications service” means a service that consists in the provision of access to and of facilities for making use of, any telecommunications network, whether or not it is one provided by the person providing the service;

“terrorist act” has the meaning given to it pursuant to the Anti-Terrorism Act 2003, No.36 of 2003;

“Tribunal” means the Tribunal established pursuant to section 30.

(2) For the purposes of this Act “the interests of national security” shall be construed as including, but not limited to, the protection of Saint



Lucia from threats of sabotage, espionage, terrorist acts, terrorism or subversion.

(3) For the purpose of this Act “detecting an offence” shall be taken to include —

- (a) establishing by whom, for what purpose, by what means and generally in what circumstances any offence may be committed; and
- (b) the apprehension of the person by whom an offence was committed;

except that, in relation to the issue, extension or modification of an interception direction or an entry warrant, it shall not include a reference to gathering evidence for use in any legal proceeding.

PART II

INTERCEPTION OF COMMUNICATIONS

Prohibition of interception

3.— (1) Except as provided in this section, a person who intentionally intercepts a communication in the course of its transmission by means of a public postal service or a telecommunications network commits an offence, and on conviction on indictment, is liable to a fine not exceeding twenty thousand dollars or a term of imprisonment not exceeding four years, or to both.

(2) A person does not commit an offence under subsection (1) if—

- (a) the communication is intercepted in accordance with an interception direction issued pursuant to section 5 or 10 or an entry warrant issued pursuant to section 8 or 10;
- (b) subject to subsection (3), that person has reasonable grounds for believing that the person to whom or by whom the communication is transmitted consents to the interception;
- (c) the communication is stored communication and is acquired in accordance with the provisions of any other law;
- (d) the communication is intercepted as an ordinary incident to the provision of public postal services or telecommunications services or to the enforcement of any law in force in Saint Lucia relating to the use of those services;
- (e) the interception is of a communication made through a telecommunications network that is so configured as to render the communication readily accessible to the general public; or



- (f) the interception is of a communication transmitted by a private telecommunications network and is done by a person who has—
 - (i) a right to control the operation or use of the private telecommunications network; or
 - (ii) the express or implied consent of a person referred to in subparagraph (i).

(3) A person does not commit an offence under subsection (1) where —

- (a) the communication is one sent by or intended for a person who has consented to the interception; and
- (b) the person is an authorised officer who believes that the interception of communication is necessary for the purpose of an emergency, of preventing death or injury or any damage to a person's physical or mental health, or of mitigating any injury or damage to a person's physical or mental health or in the interests of national security.

(4) A court convicting a person of an offence under this section may, in addition to any penalty which it imposes in respect of the offence, order the forfeiture and disposal of any device used to intercept a communication in the commission of the offence.

(5) For the purposes of this section, a communication shall be taken to be in the course of transmission by means of a telecommunications network at any time when the network by means of which the communication is being or has been transmitted is used for storing the communication in a manner that enables the intended recipient to collect it or otherwise have access to it.

Application for interception direction and unauthorised disclosure of application

4.— (1) An authorised officer who wishes to obtain an interception direction pursuant to the provisions of this Act shall request the Attorney General or the Director of Public Prosecutions to make an application *ex parte* to a Judge in chambers on his or her behalf.

(2) Subject to section 10, an application referred to in subsection (1) shall be in writing in the prescribed form and shall be accompanied by an affidavit deposing the following —



- (a) the name of the authorised officer on behalf of whom the application is made;
- (b) the facts or allegations giving rise to the application;
- (c) sufficient information for a Judge to issue an interception direction;
- (d) the ground referred to in section 5 (1) on which the application is made;
- (e) full particulars of all the facts and the circumstances alleged by the authorised officer on whose behalf the application is made including —
 - (i) if practical, a description of the nature and location of the facilities from which or the premises at which the communication is 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;
- (f) if applicable, whether other investigative procedures have been applied and failed to produce the required evidence or 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;
- (g) the period for which the interception direction is required to be issued;
- (h) whether any previous application has been made for the issuing of an interception direction in respect of the same person, the same facility or the same premises specified in the application and, if such previous application exists, shall indicate the current status of that application; and
- (i) any other directives issued by the Judge.

(3) Subsection (2)(d) shall not apply in respect of an application for the issuing of an interception direction on a ground referred to in section 5(1) (a), if a serious offence has been or is being or will probably be committed for the benefit of, or at the direction of, or in association with, a person, a group of persons or syndicate involved in organised crime.

(4) Where an interception direction is applied for on the grounds of national security, the application shall be accompanied by a written



authorisation signed by the Minister authorising the application on that ground.

(5) Subject to subsection (6), the records relating to an application for an interception direction or the renewal or modification thereof shall be —

- (a) placed in a packet and sealed by the Judge to whom the application is made immediately on determination of the application; and
- (b) kept in the custody of the court in a place to which the public has no access or such place as the Judge may authorise.

(6) The records referred to in subsection (5) may be opened if a Judge so orders only —

- (a) for the purpose of dealing with an application for further authorization; or
- (b) for renewal of an authorisation.

(7) Any person who discloses the existence of an application for an interception direction, other than to the authorised officer, commits an offence and is liable on conviction on indictment to a fine not exceeding ten thousand dollars or to a term of imprisonment not exceeding two years or to both.

(8) It shall be a defence in any proceedings against a person for the person to show —

- (a) that the disclosure was made by or to an attorney-at-law in connection with the giving by the attorney-at-law to any client of his or her advice about the effect of the provisions of this Act; and
- (b) the person to whom or, as the case may be, by whom a disclosure referred to in subsection (7) was made, was the client or a representative of the client.

(9) It shall be a defence in proceedings against a person for an offence under subsection (7) to show that the disclosure was made by an attorney-at-law —

- (a) in contemplation of, or in connection with any legal proceedings; and
- (b) for the purposes of the proceedings.



(10) Subsections (7) and (8) shall not apply in the case of a disclosure made with a view to furthering any criminal purpose.

(11) In proceedings against a person for an offence under subsection (7), it shall be a defence for that person to show that the disclosure was confined to a disclosure permitted by the authorised officer.

Issuance of interception direction

5.— (1) An interception direction shall be issued if a Judge is satisfied, on the facts alleged in the application pursuant to section 4, that there are reasonable grounds to believe that —

- (a) obtaining the information sought under the interception direction is necessary —
 - (i) in the interests of national security;
 - (ii) in the interests of public order;
 - (iii) in the interests of public morality;
 - (iv) in the interests of public safety;
 - (v) for the interest of public health;
 - (vi) for the prevention or detection of any offence specified in the Schedule, where there are reasonable grounds to believe that such an offence has been, is being or may be committed; or
 - (vii) for the purpose, in circumstances appearing to the Judge to be equivalent to those in which he or she would issue an interception direction by virtue of sub-paragraph (vi), of giving effect to the provisions of any mutual legal assistance agreement; and
- (b) other procedures —
 - (i) have not been or are unlikely to be successful in obtaining the information sought to be acquired by means of the interception direction;
 - (ii) are too dangerous to adopt in the circumstances; or
 - (iii) having regard to the urgency of the case are impracticable; and
- (c) it would be in the best interests of the administration of justice to issue the interception direction.



(2) A Judge considering an application may require the authorised officer to furnish such further information as he or she deems necessary.

Scope and form of interception direction

6.— (1) An interception direction shall be in the prescribed form and shall permit the authorised officer to —

- (a) intercept, at any place in Saint Lucia, any communication in the course of its transmission;
- (b) secure the interception in the course of its transmission by means of a postal service or a public or private telecommunications network, of such communications as are described in the interception direction; and
- (c) secure the disclosure of the intercepted material obtained or required by the interception direction, and of related communications data.

(2) An interception direction shall authorise the interception of —

- (a) communications transmitted by means of a postal service or a public or a private telecommunications network to or from —
 - (i) one particular person specified or described in the interception direction; or
 - (ii) one particular set of premises so specified and described; and
- (b) such other communications, if any as may be necessary in order to intercept communications falling within paragraph (a).

(3) An interception direction shall specify the identity of the —

- (a) authorised officer on whose behalf the application is made pursuant to section 4, and the person who will execute the interception direction;
- (b) person, if known and appropriate, whose communication is to be intercepted; and
- (c) postal service provider or the telecommunication provider to whom the interception direction to intercept must be addressed, if applicable.

(4) An interception direction may contain such ancillary provisions as are necessary to secure its implementation in accordance with the provisions of this Act.



(5) An interception direction issued pursuant to this section may specify conditions or restrictions relating to the interception of communications authorised therein.

Duration and renewal of interception direction

7.— (1) An interception direction shall cease to have effect at the end of the relevant period, but may be renewed at any time before the end of that period, on an application made pursuant to subsection (2).

(2) A Judge may renew the interception direction before the expiration of the relevant period, upon an application for the renewal of an interception direction being made by the Attorney General or the Director of Public Prosecutions on behalf of an authorised officer, if satisfied that the renewal of the interception direction is justified.

(3) An application for the renewal of an interception direction under subsection (2) shall be in writing in the prescribed form and shall be accompanied by an affidavit deposing to the circumstances relied on as justifying the renewal of the interception direction.

(4) If at any time before the end of the periods referred to in subsections (1) and (2), it appears to the authorised officer to whom the entry warrant is issued, or a person acting on his or her behalf, that an interception direction is no longer necessary, he or she shall make an application to the Court for the cancellation of the interception direction and the court may cancel the interception direction.

(5) For the purposes of this section “relevant period” means the period of five months beginning with the date of the issuance of the interception direction or, in the case of an interception direction that has been renewed, the date of its latest renewal.

Application, issuance, form and scope of entry warrant

8.— (1) An entry warrant shall not be issued by a Judge unless there exists with respect to the premises to which the application for an entry warrant relates, a related interception direction.

(2) Where the Attorney General or the Director of Public Prosecutions —

(a) makes an application for an interception direction on behalf of an authorised officer pursuant to section 4, the Attorney General



or the Director of Public Prosecutions may at the time of making the application, also apply to the Judge for the issuance of an entry warrant with respect to the premises to which the interception direction relates; or

- (b) made an application for an interception direction on behalf of an authorised officer pursuant to section 4, and the authorised officer on whose behalf the application was made, is not available, any other authorised officer may, at any such stage after the issuance of the interception direction in respect of which such an application was made, but before the expiry of the period or the extended period for which it has been issued, request the Attorney General or the Director of Public Prosecutions to apply *ex parte* to a Judge for the issuance of an entry warrant with respect to the premises to which the interception direction relates.

(3) Subject to section 9, an application for an entry warrant referred to in subsection (2), shall be in writing and in the prescribed form and shall —

- (a) be accompanied by an affidavit deposing the —
- (i) name of the authorised officer on behalf of which the application is made;
 - (ii) premises in respect of which the entry warrant is required; and;
 - (iii) the specific purpose for which the application is made;
- (b) if the application is made in terms of subsection (2) (b), also contain proof that an interception direction has been issued, and an affidavit setting forth the results, if any, obtained in the interception direction concerned from the date of its issuance up to the date on which the application was made, or a reasonable explanation of the failure to obtain such results; and
- (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, indicate the status of the previous application.

(4) Subject to subsections (1) and (5), a Judge may upon an application made to him or her by the Attorney General or the Director of Public Prosecutions on behalf of an authorised officer, issue an entry warrant.



(5) An entry warrant shall be issued if the Judge is satisfied, on the facts alleged in the application concerned that —

- (a) the entry into the premises is necessary for the purpose —
 - (i) of intercepting a postal article or a communication on the premises;
 - (ii) for installing and maintaining an interception device on; or
 - (iii) for removing an interception device from, the premises; and
- (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.

(6) An entry warrant —

- (a) shall be in the prescribed form in writing;
- (b) shall contain the information referred to in subsection (3) (a) (ii) and (iii); and
- (c) may contain conditions or restrictions relating to the entry upon the premises concerned as the Judge may consider necessary.

(7) An entry warrant shall permit an authorised officer to enter upon the premises specified in the entry warrant for the purposes of —

- (a) intercepting a postal article or a communication by means of an interception device;
- (b) installing and maintaining an interception device; or
- (c) removing an interception device.

(8) An entry warrant shall expire when whichever of the following occurs first—

- (a) the period or the extended period for which the related interception direction concerned has been issued lapses;
- (b) it is terminated pursuant to section 10 by a Judge; or
- (c) the interception direction to which it relates is terminated in accordance with section 9 or 10.

(9) When an entry warrant has expired pursuant to subsection (8)(a), the authorised officer on whose behalf the application was made or, if he



or she is not available, any other authorised officer who would have been entitled to request the Attorney General or the Director of Public Prosecutions to make the application, shall, as soon as practicable after the date of expiry of the entry warrant, 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 and which, at the expiry date of the entry warrant, has not yet been removed from the premises concerned.

Termination of interception direction or entry warrant

9.— (1) A Judge who issued an interception direction or an entry warrant or both, or if he or she is not available, any other Judge entitled to issue such an interception direction or entry warrant pursuant to section 4 or 8 may —

- (a) terminate the interception direction or the entry warrant or both, if —
 - (i) the authorised officer fails to submit a report in accordance with section 12, if applicable; or
 - (ii) the Judge upon receipt of a report submitted pursuant to section 12 is satisfied that the objectives of the interception direction or the entry warrant or both, have been achieved, or the grounds on which the interception direction or the purpose for which the entry warrant was issued, or both has ceased to exist; or
- (b) terminate the entry warrant and make an order affirming the interception direction if the application for the interception direction and the entry warrant are related and he or she is satisfied that the interception of communication can be obtained by use only of the interception direction.

(2) Where a Judge terminates an interception direction or an entry warrant or both pursuant to subsection (1), he or she shall forthwith in writing inform the authorised officer concerned of the termination.

(3) Where an interception direction issued in accordance with this Act is terminated in accordance with this section or section 10 —

- (a) the contents of any communication intercepted under that direction shall be inadmissible as evidence in any criminal proceedings or civil proceedings which may be contemplated, unless the Court is of the opinion that the admission of such



evidence would not render the trial unfair or otherwise detrimental to the administration of justice; or

(b) any postal article that was taken into possession under that direction shall be dealt with in accordance with section 14 (3).

(4) Where an entry warrant is terminated in accordance with this section or section 10, the authorised officer shall, as soon as practicable, after having been informed of the termination, remove or cause to be removed from the premises to which the entry warrant relates, any intercepted device which was installed pursuant to the entry warrant.

(5) Where an interception direction has been terminated pursuant to this section or section 10, an entry warrant issued pursuant to the interception direction shall also be deemed to be terminated.

Urgent application, form, issuance and scope and termination of interception direction or entry warrant

10.— (1) Where a Judge is satisfied that the urgency of the circumstances so require, he or she may dispense with the requirements for a written application and proceed to hear an oral application made by the Attorney General or Director of Public Prosecutions on behalf of an authorised officer for an interception direction, or an entry warrant, or both or for a renewal of either an interception direction or an entry warrant, or both.

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

(a) contain the information referred to in section 4(2) and section 8(6) (b);

(b) indicate the particulars of the urgency of the case or the other exceptional circumstances which, in the opinion of the authorised officer, justifies the making of an oral application, and;

(c) comply with any directives, which may be issued by the Judge.

(3) A Judge may, where an oral application is made to him or her, issue an interception direction or an entry warrant or both, or a renewal thereof, if he or she is satisfied that —

(a) there are reasonable grounds to believe that the interception direction or the entry warrant or both, shall be issued; and



(b) it is not reasonably practicable, having regard to the urgency of the case or the existence of exceptional circumstances, for the Attorney General or the Director of Public Prosecutions to make a written application, on behalf of the authorised officer, for the issuing of the interception direction or the entry warrant or both, applied for.

(4) An interception direction or an entry warrant issued pursuant to this section shall have the same scope as an interception direction or an entry warrant issued pursuant to sections 5 and 8.

(5) Where an interception direction or an entry warrant or both, is issued or renewed under this section, the Attorney General or the Director of Public Prosecutions shall, on behalf of the authorised officer, within seventy-two hours of the time of the issue or, as the case may be, the renewal thereof, submit to the Judge a written application and affidavit in accordance with the provisions of sections 4(2), or 8(3), or both as the case may be.

(6) On the expiration of seventy-two hours from the time of the issue or the renewal of the interception direction or the entry warrant or both under this section, the Judge shall review his or her decision to issue or renew the interception direction or the entry warrant, or both.

(7) In reviewing his or her decision pursuant to subsection (6), the Judge shall determine whether the interception direction or the entry warrant or both, continues to be necessary pursuant to section 5(1) or 8(5).

(8) If pursuant to this section, the Judge is satisfied that the interception direction or the entry warrant or both, continues to be necessary, he or she shall make an order affirming the issue or, renewal of the entry warrant or interception direction or both.

(9) Where pursuant to this section, the Judge issues an interception direction and an entry warrant relating to the interception direction at the same time, and he or she is satisfied that in accordance with section 5 (1) the interception direction continues to be necessary, but not the entry warrant, he or she shall make an order affirming the issue of the interception direction and terminating the entry warrant.

(10) If the Judge is not satisfied that an interception direction or an entry warrant or both, continues to be necessary, he or she shall make an order terminating either or both.



(11) Where an interception direction or an entry warrant issued or renewed under this section is terminated under subsection (10), the interception direction or the entry warrant shall cease to have effect upon such termination.

(12) Where the issue or the renewal of an interception direction, is affirmed under subsection (8) of this section, the provisions of section 7 shall apply with respect to its duration as if the date of the order affirming the issue or the renewal of the interception direction were the date on which the warrant was first issued or, as the case may be, the date of its latest renewal.

(13) Where the issue or renewal of an entry warrant is affirmed under subsection (8), the provisions of section 8(8) shall apply with respect to its duration.

(14) Where an interception direction is terminated pursuant to this section, the entry warrant issued pursuant to the interception direction shall also be deemed to be terminated.

Modification of interception direction and entry warrant

11. A Judge may modify any of the provisions of an interception direction or an entry warrant or both, at any time, after hearing representations from the Attorney General or the Director of Public Prosecutions acting on behalf of an authorised officer and if he or she is satisfied that there is any change in the circumstances, which may make the requested modifications necessary or expedient.

Reports on progress

12. A Judge who has issued an interception direction or an entry warrant or both, may at the time of issuance or at any stage before the date of expiry thereof, in writing require the authorised officer, on whose behalf the relevant application was made in respect of the interception direction or the entry warrant or both, to report to him or her in writing —

- (a) at such intervals as he or she determines on —
 - (i) the progress that has been made towards achieving the objectives of the interception direction or the entry warrant or both; and
 - (ii) any other matter which the Judge deems necessary; or



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

Protection for acts done in good faith

13. An authorised officer shall not be liable for any acts done by him or her in good faith pursuant to the provisions of this Act.

PART III
EXECUTION OF INTERCEPTION DIRECTIONS
AND ENTRY WARRANTS

Execution of interception direction or entry warrant

14.— (1) If an interception direction or an entry warrant or both, has been issued pursuant to the provisions of this Act, an authorised officer may execute that interception direction or entry warrant or both.

(2) An authorised officer who executes an interception direction or an entry warrant or assists with the execution thereof may intercept, at any place in Saint Lucia, any communication in the course of its transmission to which the interception direction applies.

(3) Where possession has been taken of a postal article pursuant to subsection (2), the authorised officer who executes the interception direction and the entry warrant or assists with the execution thereof —

- (a) shall take proper care of the postal article and may, if the postal article concerned is perishable, with due regard to the interests of the persons concerned, dispose of that postal article in such manner as circumstances may require;
- (b) shall return the postal article, if it has not been disposed of in terms of paragraph (a), or cause it to be returned to the postal provider if, in the opinion of the authorised officer concerned—
- (i) no criminal or civil proceedings as contemplated will be instituted in connection with the postal article or;
- (ii) the postal article will not be required at any such criminal or civil proceedings for purposes of evidence or for purposes or order of the court; and
- (iii) such postal article may be returned without prejudice to the national security of Saint Lucia, public safety, public health or economic well being of Saint Lucia as the case may be.

**Entry on premises for execution of entry warrant**

15. If an entry warrant has been issued pursuant to the provisions of this Act, an authorised officer who executes or assists with the execution thereof, may at any time during which the entry warrant is in force, without prior notice to the owner or occupier of the premises specified in the entry warrant, enter the said premises and perform any act relating to the purpose for which the entry warrant has been issued.

Duty to provide assistance

16.— (1) A person who provides a public postal service or a telecommunications service by means of a public telecommunications network or a private telecommunications network shall take such steps as are necessary to facilitate the execution of an interception direction or an entry warrant, or both.

(2) Where the authorised officer intends to seek the assistance of any person in executing an interception direction or an entry warrant or both, the Judge shall, on the request of the Attorney General or the Director of Public Prosecutions, appearing on behalf of the authorised officer, direct appropriate persons to furnish information, facilities, or technical assistance necessary to accomplish the interception.

(3) A person who knowingly fails to comply with his or her duty under subsection (2) commits an offence and is liable on summary conviction to a fine not exceeding two thousand dollars or to a term of imprisonment not exceeding six months or to both.

(4) An action shall not be brought in any court against a person for any act done in good faith pursuant to an interception direction or an entry warrant or both, to provide information, facilities or technical assistance under subsection (2).

(5) A person directed to provide assistance by way of information, facilities, or technical assistance pursuant to subsection (2), shall promptly comply in such a manner that the assistance is rendered —

- (a) as unobtrusively; and
- (b) with the minimum interference to the services that such a person or entity normally provides to the party affected by the interception direction or entry warrant, as can reasonably be expected in the circumstances.



(6) For the purposes of this section, the provision of information facilities or technical assistance includes any disclosure of intercepted material and related communications data to the authorised officer.

Confidentiality of intercepted communications

17.— (1) Where a Judge issues an interception direction or an entry warrant, he or she shall issue the interception direction or entry warrant as he or she considers appropriate for the purpose of requiring the authorised officer to make such arrangements as are necessary for ensuring that Regulations made pursuant to section 36(2)(b) and (c) are complied with.

(2) Where any record is made, whether in writing or otherwise, of any communication obtained by means of an interception direction or an entry warrant or both, the person to whom the interception direction or the entry warrant or both, is issued shall, as soon as possible after the record has been made, cause to be destroyed after a prescribed period, so much of the record as does not relate directly or indirectly to the purposes for which the interception direction or the entry warrant was issued or is not required for the purposes of any prosecution for an offence.

(3) A person who fails to comply with subsection (2) commits an offence and is liable, on summary conviction, to a fine not exceeding two thousand dollars or to imprisonment for a term not exceeding six months.

Exclusion of matters from legal proceedings

18.— (1) Subject to section 19, no evidence shall be adduced, question asked, assertion or disclosure made, or other thing done, for the purposes of or in connection with any legal proceedings which, in any manner —

- (a) discloses, in circumstances from which its origin in anything specified in subsection (2) may be inferred, any of the contents of intercepted communications data; or
- (b) tends, apart from any such disclosure, to suggest that anything specified in subsection (2) has or may have occurred or is going to occur.

(2) The circumstances referred to in subsection (1) are as follows—

- (a) conduct by a person falling within subsection (3) that was or would be an offence under section 3(1);



- (b) the issue of an interception direction or an entry warrant or both;
 - (c) the making of an application by the Attorney General or the Director of Public Prosecutions on behalf of an authorised officer, for an interception direction or an entry warrant or both;
 - (d) the imposition of any requirement on any person to provide assistance with giving effect to an interception direction or an entry warrant.
- (3) The persons referred to in subsection (2) (a) are —
- (a) any person to whom an interception direction or an entry warrant pursuant to this Act may be addressed;
 - (b) any person holding office under the Crown;
 - (c) any person employed by or for the purposes of the Police Force or the Financial Intelligence Authority;
 - (d) any person providing a postal service or employed for the purposes of any business of providing a postal service; and
 - (e) any person providing a telecommunication service or an employee for the purposes of any business of providing such a service.

Exceptions to section 18

19.— (1) Section 18 shall not apply to —

- (a) any application to a Judge under this Act;
- (b) any proceedings for a relevant offence; and
- (c) proceedings before the Tribunal in relation to an offence committed pursuant to the provisions of this Act.

(2) Section 18 shall not prohibit anything done in, for the purposes of, or in connection with, so much of any legal proceedings as relates to the lawfulness of a dismissal on the grounds of any conduct constituting an offence under section 3(1), or section 22.

(3) Section 18(1)(a) shall not prohibit the disclosure of any contents of a communication if the interception of that communication does not constitute an offence by virtue of section 3(2)(b), (c), (d) or section 3(3).



(4) Where any disclosure is proposed to be or has been made on the grounds that it is authorised by subsection (3), section 18(1) shall not prohibit the doing of anything in or for the purposes of, so much of any legal proceedings as relates to the question whether that disclosure is or was so authorised.

(5) Section 18(1)(b) shall not prohibit the doing of anything that discloses any conduct of a person for which he or she has been convicted of an offence pursuant to section 3(1), 16 or 22.

(6) Nothing in section 18(1) shall prohibit any such disclosure of any information that continues to be available as is confined to a disclosure to a person conducting a criminal prosecution for the purpose only of enabling that person to determine what is required of him or her by his or her duty to secure the fairness of the prosecution.

(7) For the purposes of this section “relevant offence” means —

- (a) an offence under any provision of this Act;
- (b) an offence under the Telecommunications Act 2000, No.27 of 2000;
- (c) perjury in the course of any proceedings mentioned in subsection (1) or subsection (2) of this section;
- (d) attempting or conspiring to commit, or aiding, abetting, counselling or procuring the commission of, an offence falling within any of the preceding paragraphs; and
- (e) contempt of court committed in the course of, or in relation to, any proceedings mentioned in subsection (1) or subsection (3) of this section.

Offence for unauthorised disclosure of interception

20.— (1) Where an interception direction or an entry warrant or both, has been issued or renewed, it shall be the duty of every person mentioned under section 18(3) to keep such information confidential —

- (a) the existence and the contents of the interception direction and the entry warrant;
- (b) the details of the issue of the interception direction and the entry warrant and of any renewal or modification of either;



- (c) the existence and the contents of any requirement to provide assistance with the giving effect to the interception direction or the entry warrant;
- (d) the steps taken pursuant to the interception direction or the entry warrant or of any such requirement; and
- (e) everything in the intercepted material together with any related communications data.

(2) A person who makes a disclosure to any person of anything that he or she is required to keep confidential under subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year or to both.

(3) In relation to proceedings against any person for an offence under this section in respect of any disclosure, subsections (8) to (11) of section 4 with any necessary modification shall apply as they apply in relation to proceedings under section 4.

(4) In proceedings against any person for an offence under this section in respect of any disclosure, it shall be a defence for that person to show that the disclosure was confined to a disclosure authorised —

- (a) by the interception direction or the entry warrant or by the person to whom the interception direction or the entry warrant is or was addressed; or
- (b) by section 16.

PART IV

PROTECTED INFORMATION

Order requiring disclosure of protected information

21.— (1) Where protected information has come into the possession of an authorised officer by virtue of an interception direction or an entry warrant or both, pursuant to this Act, or by means of the exercise of a statutory power to seize, detain, inspect, search or otherwise to interfere with documents or other property, or is likely to do so, or has otherwise come into possession of an authorised officer by any other lawful means, and he or she has reasonable grounds to believe that —



- (a) a key to the protected information is in the possession of any person; and
- (b) disclosure of the information is necessary for any of the purposes specified in section 5(1)(a)(i) or (ii);

the Attorney General or the Director of Public Prosecutions may apply in the prescribed form on his or her behalf to a Judge in chambers for a disclosure order requiring the person whom he or she believes to have possession of the key to provide disclosure in respect of the protected information.

(2) A disclosure order under subsection (1) —

- (a) shall —
 - (i) be in writing in the prescribed form;
 - (ii) describe the protected information to which the order relates;
 - (iii) specify the time by which the order is to be complied with, being a reasonable time in all the circumstances; and
 - (iv) set out the disclosure that is required by the order, and the form and manner in which the disclosure is to be made; and
- (b) may, require the person to whom it is addressed to keep confidential the contents of the existence of the order.

(3) A disclosure order pursuant to this section shall not require the disclosure of any key which —

- (a) is intended to be used for the purposes only of generating electronic signatures; and
- (b) has not in fact been used for any other purpose.

(4) In granting a disclosure order required for the purposes of subsections (1) and (2), the Judge shall take into account —

- (a) the extent and the nature of any protected information to which the key is also a key; and
- (b) any adverse effect that complying with the order might have on a business carried on by a person to whom the order is addressed;

and shall permit only such disclosure as is proportionate to what is sought to be achieved, allowing, where appropriate, for disclosure in such a manner as would result in the putting of the information in intelligible form other than by disclosure of the key itself.



(5) A disclosure order made pursuant to this section shall not require the making of any disclosure to a person other than —

- (a) the authorised officer named in the disclosure order; or
- (b) such other person, or description of persons, as may be specified in the disclosure order.

Effects of disclosure order

22.— (1) Subject to subsection (2), a person to whom a disclosure order is addressed —

- (a) shall be entitled to use any key in his or her possession to obtain access to the protected information; and
- (b) in accordance with the disclosure order, shall disclose the protected information in an intelligible form.

(2) Where a disclosure order requires the person to whom it is addressed to disclose protected information in an intelligible form, that person shall be taken to have complied with that requirement if —

- (a) he or she makes instead, a disclosure of any key to the protected information that is in his or her possession; or
- (b) the disclosure is made in accordance with the order, with respect to the person to whom and the time in which, he or she was required to disclose the information.

(3) When a disclosure order requiring access to protected information or the putting of protected information into intelligible form, is addressed to a person who is —

- (a) not in possession of the protected information to which the order relates, or
- (b) incapable, without the use of a key that is not in his or her possession, of obtaining access to the protected information or disclosing it in an intelligible form;

he or she shall be taken to have complied with the order if he or she discloses any key to the protected information that is in his or her possession.

(4) It shall be sufficient for the purposes of complying with a disclosure order for the person to whom it is addressed to disclose only those keys, the disclosure of which is sufficient to enable the person to



whom they are disclosed to obtain access to the protected information and to put it in an intelligible form.

(5) Where —

- (a) the disclosure required by a disclosure order pursuant to this section allows the person to whom it is addressed to comply with the disclosure order without disclosing all of the keys in his or her possession; and
- (b) there are different keys, or combination of keys, in the possession of the person referred to in paragraph (a), the disclosure of which would constitute compliance with the order;

that person may select which of the keys, or combination of keys, to disclose for the purposes of complying with the disclosure order.

(6) Where a disclosure order is addressed to a person who —

- (a) was in possession of a key to protected information but is no longer in possession of it; and
- (b) if he or she had continued to have the key to the protected information in his or her possession, would be required by virtue of the order to disclose it; and
- (c) is in possession of information that would facilitate the obtaining of discovery of the key to the protected information or the putting of the protected information into an intelligible form;

that person shall disclose to the person to whom he or she would have been required to disclose the key, all such information as is mentioned in paragraph (c) for the purpose therein mentioned.

(7) A person who, without reasonable excuse fails to comply with a disclosure order commits an offence and is liable on summary conviction or indictment to a fine not exceeding five thousand dollars or to a term of imprisonment not exceeding one year or to both.

(8) A person who obtains a disclosure order shall ensure that such arrangements are made as are necessary for ensuring that —

- (a) a key disclosed pursuant to the disclosure order is used to obtain access to or put into intelligible form only the protected information in relation to which the order was given;
- (b) every key disclosed pursuant to the disclosure order is stored, for so long as it is retained, in a secure manner, and any records



of such key are destroyed as soon as no longer needed to access the information or put it in an intelligible form; and

- (c) the number of—
- (i) persons to whom the key is disclosed or otherwise made available; and
 - (ii) copies made of the key;

is limited to the minimum that is necessary for the purpose of enabling the protected information to be accessed or put into an intelligible form.

(9) Subject to subsection (10) of this section, where any relevant person incurs any loss or damage as a consequence of a breach by a person referred to in subsection (8) of the duty imposed upon him or her by that subsection, the breach shall be actionable against the person referred to in subsection (8) at the suit or instance of the relevant person.

(10) A person is a relevant person for the purposes of subsection (9) if he or she is —

- (a) a person who has made a disclosure in pursuance of a disclosure order made under section 21; or
- (b) a person whose protected information or key has been disclosed pursuant to a disclosure order made under section 21;

and loss or damage shall be taken into account for the purposes of section 21 to the extent only that it relates to the disclosure of a particular protected information or a particular key which, in the case of a person falling within paragraph (b), shall be his or her information or key.

(11) For the purposes of subsection (10) —

- (a) information belongs to a person if he or she has any right that would be infringed by an unauthorised disclosure of the information; and
- (b) a key belongs to a person if it is a key to information that belongs to him or her or he or she has any right that would be infringed by an unauthorised disclosure of the key.

Tipping off

23.— (1) This section applies where a disclosure order under section 21 contains a provision requiring —



- (a) the person to whom the disclosure order is addressed; and
- (b) every other person who becomes aware of it or of its contents;

to keep confidential the making of the disclosure order, its contents and the things done pursuant to it.

(2) A disclosure order made under section 21 shall not contain a requirement to keep anything secret except where the protected information to which it relates has come, or is likely to come, into possession of an authorised officer by means which it is reasonable, in order to maintain the effectiveness of any investigation or operation or of investigatory techniques generally, or in the interests of safety or well-being of any person, to keep confidential from a particular person.

(3) Any person who makes a disclosure to any other person of anything that he or she is required by a disclosure order under section 21 to keep confidential, commits an offence and is liable, on summary conviction, to a fine not exceeding five thousand dollars or to a term of imprisonment not exceeding one year.

(4) In proceedings against any person for an offence under this section in respect of any disclosure, it shall be a defence for that person to show that —

- (a) the disclosure was effected entirely by the operation of software designed to indicate when a key to protected information has ceased to be secure; and
- (b) the person could not reasonably have been expected to take steps, after the disclosure order was issued to him or her or, as the case may be, on becoming aware of it or of its contents, to prevent the disclosure.

(5) Subsections (8) to (10) of section 4 shall apply, with necessary modifications, in relation to proceedings for an offence under this section as they apply in relation to proceedings for an offence under that section.

(6) In proceedings against any person for an offence under this section, it shall be a defence for that person to show that the disclosure was confirmed to a disclosure authorised —

- (a) by the terms of a disclosure order made pursuant to section 21; or
- (b) by or on behalf of a person who —



- (i) is in lawful possession of the protected information to which it relates; and
- (ii) came into the possession of that protected information as mentioned in section 21(1).

(7) In proceedings for an offence under this section against a person other than the person to whom the disclosure order under section 21 was addressed, it shall be a defence for the person against whom the proceedings are brought to show that he or she neither knew nor had reasonable grounds for suspecting that the order contained a requirement to keep confidential what was disclosed.

PART V
COMMUNICATIONS DATA

Disclosure of communications data

24.— (1) For the purposes of this section —

“designated person” means the Minister or person designated for the purposes of this section by the Minister by Order published in the *Gazette*;

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

- (a) identifying, or purporting to identify, any person, apparatus or location to or from which the communication is or may be transmitted, and “data” in relation to a postal article, means anything written on the outside of the postal article;
- (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 purposes of a telecommunications network for effecting, in whole or in part, the transmission of any communications; or
 - (ii) any telecommunications network in which that apparatus is comprised;
- (d) identifying the data or other data as data comprised in or attached to a particular communication; or



(e) identifying a computer file or a computer programme, access to which is obtained or which is run by means of the communication, to the extent only that the file or the 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.

(2) Where it appears to the designated person that a telecommunications provider is or may be in possession of, or capable of obtaining, any communications data, the designated person may, by notice in writing, require the telecommunications provider —

- (a) to disclose to an authorised officer all of the data in his or her possession or subsequently obtained by him or her, or
- (b) if the telecommunications provider is not already in possession of the data, to obtain the data and to disclose the data to an authorised officer.

(3) A designated person shall not issue a notice under subsection (2) in relation to any communications data unless he or she is satisfied that it is necessary to obtain the data and to disclose the data to an authorised officer so disclose it.

(4) A designated person shall not issue a notice under subsection (2) in relation to any communication data unless he or she is satisfied that it is necessary to obtain that data —

- (a) in the interests of national security;
- (b) for the purpose of preventing or detecting an offence specified in the Schedule where there are reasonable grounds to believe that such an offence is being or may be committed.
- (c) in the interests of public order;
- (d) in the interests of public morality;
- (e) in the interest of public health;
- (f) for the purpose in an emergency, of preventing death, injury or any damage to a person's physical or mental health, or of mitigating any injury or damage to a person's physical or mental health; or

(4) A notice pursuant to this section shall state —



- (a) the communication data in relation to which it applies;
- (b) the authorised officer to whom the disclosure is to be made;
- (c) the manner in which the disclosure is to be made;
- (d) the matters falling within subsection (3) by reference to which the reference is issued; and
- (e) the date on which it is issued.

(5) A notice pursuant to this section shall not require —

- (a) any communications data to be obtained after the end of the period of one month beginning on the date on which the notice is issued; or
- (b) the disclosure, after the end of such period, of any communications data not in the possession of the provider of the telecommunications service, or required to be obtained by him or her, during that period.

(6) The provisions of sections 21 and 22 shall apply, with necessary modifications, in relation to the disclosure of data pursuant to a notice under to this section.

(7) Subject to subsection (8), a provider of a telecommunications service, to whom a notice is issued under this section, shall not disclose to any person the existence or operation of the notice, or any information from which such existence or operation could reasonably be inferred.

(8) The disclosure referred to in subsection (7) may be made to—

- (a) an officer or agent of the service provider for the purpose of ensuring that the notice is complied with; or
- (b) an attorney-at-law for the purpose of obtaining legal advice or representation in relation to the notice;

and a person referred to in paragraph (a) or (b) shall not disclose the existence or operation of the notice, except to the authorised officer specified in the notice for the purpose of —

- (i) ensuring that the notice is complied with, or obtaining legal advice or representation in relation to the notice, in the case of an officer or agent of the service provider; or
- (ii) giving legal advice or making representations in relation to the notice, in the case of an attorney-at-law.



(9) A person shall not disclose any communications data obtained under this Act, except —

- (a) as permitted by the notice;
- (b) in connection with the performance of his or her duties; or
- (c) where if the Minister directs that the disclosure be made to a foreign Government or agency of a foreign Government where there exists between Saint Lucia and that foreign Government an agreement for the mutual exchange of that kind of information and the Minister considers it to be in the public interest that such disclosure be made.

(10) A person who contravenes subsection (7), (8) or (9) of this section commits an offence and is liable, on summary conviction, to a fine not exceeding five thousand dollars or to a term of imprisonment for a term not exceeding one year or to both.

Admissibility of communications data

25.— (1) Subject to section 18 and section 19 of this Act, and to subsection (2) of this section, communications data submitted as evidence in any proceedings pursuant to this Act shall be admissible in evidence in accordance with the law relating to the admissibility of evidence.

(2) In admitting into evidence any communications data referred to in subsection (1) —

- (a) no question shall be asked of any witness that discloses or might result in the disclosure of any of the details pertaining to the method by which the data was obtained or the identity of any party who supplied the data;
- (b) a statement by the witness that the data was obtained by virtue of a disclosure order under section 21 shall be sufficient disclosure as to the source or origin of the data; and
- (c) in proving the truth of a statement referred to in paragraph (b), the witness shall not be asked to disclose any of the matters referred to in paragraph (a).

(3) Subsection (2) shall not apply to any proceeding in respect of an offence under this Act but if the court is satisfied that —

- (a) the disclosure is would be likely to jeopardise the course of any investigations or be prejudicial to the interests of national security; and



- (b) the parties to the proceedings would not be unduly prejudiced thereby, the court shall not require or permit disclosure of the matters referred to in subsection (2)(a).

PART VI
LISTED EQUIPMENT

Listed equipment

26.— (1) Subject to subsection (4) the Minister may, by Order published in the *Gazette*, declare any electronic, electro magnetic, acoustic, mechanical or other instrument, device or equipment, the design of which renders it primarily useful for purposes of the interception of communications, under the conditions or circumstances specified in the Order.

(2) An Order under subsection (1) may at any time in like manner be amended or withdrawn.

(3) The first Order to be issued by the Minister under subsection (1) shall be published in the *Gazette* within three months after the date of commencement of this Act.

(4) Subject to subsection (6), before the Minister exercises the powers conferred upon him or her under subsection (1), he or she shall cause to be published in the *Gazette* a draft of the proposed Order, together with a notice inviting all interested parties to submit to him or her in writing and within a specified period, comments and representations in connection with the proposed Order.

(5) A period not exceeding one month shall elapse between the publication of the draft Order and the publication of the Order under subsection (1).

(6) Subsection (4) of this section shall not apply —

- (a) if the Minister, pursuant to comments and representations received in terms of subsection (4) decides to publish a Order referred to in subsection (1) in an amended form; or
- (b) to any declaration in terms of subsection (1) in respect of which the Minister is of the opinion that the public interest requires that it be made without delay.

(7) An Order under subsection (1) shall, be subject to affirmative resolution of the House of Assembly and Senate.

**Prohibition on manufacture and possession of listed equipment**

27.— (1) Subject to subsection (2) of this section and section 28, a person shall not manufacture, assemble, possess, sell, or purchase any listed equipment.

(2) Subsection (1) shall not apply to any authorised officer or any other person who manufactures, assembles, possesses, sells, purchases, or advertises listed equipment under the authority of a certificate of exemption issued to him or her by the Minister under section 28.

Exemptions

28.— (1) The Minister may, upon application made by a person in the prescribed form, and acting upon the advice of Cabinet, exempt a person from one or all of the prohibited acts listed under subsection (1) of section 27 for such period and on such terms as the Minister may determine.

(2) The Minister shall not grant an exemption under subsection (1) unless he or she is satisfied that —

- (a) the exemption is in the public interest; or
- (b) special circumstances exist which justify the exemption.

(3) An exemption under subsection (1) of this section shall be granted by issuing to the person concerned, a certificate of exemption, in the prescribed form in which his or her name, and the scope, period and conditions of the exemption are specified.

(4) A certificate of exemption granted pursuant to subsection (3) shall be published in the *Gazette* and shall become valid upon the date of such publication.

(5) A certificate of exemption may at any time in like manner be amended or withdrawn by the Minister.

- (6) A certificate of exemption lapses upon —
- (a) termination of the period for which it was granted; or
 - (b) withdrawal pursuant to subsection (5).

Offence for contravention of section 27

29.— (1) A person who contravenes or fails to comply with section 27 commits an offence and is liable on summary conviction to a fine not exceeding twenty five thousand dollars or to imprisonment for a term not exceeding five years or to both.



(2) A court convicting a person of an offence under subsection (1) of this section shall in addition to any penalty which it may impose in respect of the offence, declare any listed equipment —

- (a) by means of which the offence was committed;
- (b) which was used in the connection with the commission of the offence;
- (c) which was found in the possession of the convicted person; or
- (d) the possession of which constituted the offence;

to be forfeited to the Crown.

(3) Where a person is convicted of an offence referred to in subsection (1), the court shall, in addition to the penalty which it may impose in respect of the offence, declare forfeited to the State any equipment other than listed equipment which was found in the possession of the convicted person and —

- (a) the possession of which constitutes an offence;
- (b) by means of which the offence was committed; or
- (c) which was used in connection with the commission of the offence.

(4) Any listed equipment or other equipment declared forfeited under subsection (2) or (3) of this section shall, as soon as practicable after the date of declaration of forfeiture be delivered to the Commissioner of Police.

(5) Any listed equipment or other equipment delivered to the Commissioner of Police pursuant to subsection (4) shall, in the case of—

- (a) listed equipment declared forfeited under subsection (2) of this section, be kept by the Commissioner of Police;
 - (i) for a period not exceeding four months with effect from the date of declaration of forfeiture; or
 - (ii) if an applicant under subsection (8) is made, pending the final decision in respect of any such application has been given; or
- (b) equipment declared forfeited under subsection (3) of this section, be kept by the Commissioner of Police for a period not



exceeding thirty days with effect from the date of declaration of forfeiture and shall as soon as practicable after the expiry of the period of thirty days referred to be destroyed by the Commissioner of Police.

- (6) The Commissioner shall —
- (a) as soon as practicable after the expiry of the period referred to in paragraph (a) sub-paragraph (i) of subsection (5) of this section;
 - (b) if the decision referred to in subsection (5)(a)(ii) has been given against the person making the application; or
 - (c) if an application referred to in subsection (5)(a)(ii) has been refused;

destroy such listed equipment or other equipment in his or her possession.

(7) A declaration of forfeiture pursuant to subsection (3) shall not affect any right which a person, other than the convicted person, may have to the listed equipment, if the person can show that —

- (a) he or she has been exempted under section 28 from the relevant prohibited act referred to in section 27 in respect of such listed equipment;
- (b) he or she has taken all reasonable steps to prevent the use thereof in connection with the offence; and
- (c) could not reasonably be expected to have known or had no reason to suspect that the listed equipment concerned was being or would be used in connection with the offence.

(8) The Judge may, upon an application made at any time within a period of three months with effect from the date of declaration of forfeiture under subsection (3), by any person other than the convicted person, who claims that —

- (a) the listed equipment declared forfeited under subsection (3) is his or her property; and
- (b) he or she is a person referred to in subsection (9);

inquire into and determine those matters.

- (9) If the Judge under subsection (8) is satisfied that the —



- (a) listed equipment concerned is the property of the person; and
 - (b) the person concerned is a person referred to in subsection (8);
- the Judge shall set aside the declaration of forfeiture and direct that the listed equipment concerned be returned to the person.

PART VII
THE TRIBUNAL

Establishment of Tribunal

30.— (1) There shall be established, for the purpose of exercising jurisdiction conferred upon it by this section, a Tribunal consisting of a Judge who shall be appointed by the Chief Justice acting on his or her own deliberate judgement.

(2) The jurisdiction of the Tribunal shall —

- (a) be the only forum for the purposes of any proceedings under any law of Saint Lucia which shall fall within subsection (3) of this section;
- (b) to consider and determine any complaints made to the Tribunal which, in accordance with subsection (4), are complaints for which the Tribunal is the appropriate forum; and
- (c) to consider and determine any reference to the Tribunal by any person that he or she has suffered detriment as a consequence of any prohibition or restriction, by virtue of section 21, on his or her relying in, or for the purposes of, any civil proceedings on any matter.

(3) The following proceedings shall be subject to this section —

- (a) proceedings brought by virtue of section 22(9); or
- (b) proceedings relating to the taking place in any challengeable circumstances of any conduct falling within subsection (5).

(4) The Tribunal shall be the appropriate forum for any complaint if it is a complaint by a person who is aggrieved by any conduct falling within subsection (5), which he or she believes —

- (a) to have taken place in relation to him or her, to any communications sent by him or her, or intended for him or her, or to his or her use of any postal service, telecommunications service or telecommunications network; and



(b) to have taken place in challengeable circumstances.

(5) The following conduct shall be subject to this section —

(a) conduct for or in connection with the interception of communications in the course of its transmission by means of a postal service or a telecommunications service; or

(b) any disclosure or use of a key to protected information.

(6) For the purposes of this section conduct takes place in challengeable circumstances if —

(a) it is conduct by or on behalf of a person holding any office, rank or position in the Police Force or the Financial Intelligence Authority, or any other position within the Government service, and;

(b) the conduct took place without the authority of an interception direction or an entry warrant, or otherwise without authority under this Act.

(7) Without prejudice to subsection (6), conduct does not take place in challengeable circumstances to the extent that it is authorised by, or takes place with the permission of, a judicial authority.

(8) For the purposes of subsection (7) “judicial authority” means a Judge or a Magistrate.

Exercise of the Tribunal’s jurisdiction

31.— (1) The Tribunal shall not be under any duty to hear, consider or determine any proceedings, complaint or reference if it appears to it that the bringing of the proceedings or the making of the complaint or reference is frivolous or vexatious.

(2) Except where the Tribunal, having regard to all the circumstances, is satisfied that it is equitable to do so, it shall not consider any complaint made by virtue of section 30(2)(b) if it is made more than one year after the taking place of the conduct to which it relates.

(3) Subject to any provision made by the rules pursuant to section 33, where any proceedings have been brought before the Tribunal or any reference made to the Tribunal, it shall have power to make such interim orders, pending its final determination, as it thinks fit.



(4) Subject to any provision made by rules pursuant to section 33, the Tribunal on determining any proceedings, complaint or reference shall have the power to make any award of compensation or other order as it thinks fit, including an order requiring the destruction of any records of information, which is held by any public authority in relation to any person.

(5) Appeals from determinations, awards, orders and other decisions of the Tribunal, shall lie to the Court of Appeal.

Tribunal procedure

32.— (1) Subject to any rules made pursuant to section 33, the Tribunal shall be entitled to determine its own procedure in relation to any proceedings, complaint or reference brought before or made to it.

(2) In determining its procedure under this section, the Tribunal shall have regard in particular to —

- (a) the need to ensure that matters which are the subject of proceedings, complaints or references brought before or made to the Tribunal are properly heard and considered; and
- (b) the need to ensure that information is not disclosed to an extent, or in a manner, that is contrary to the public interest or prejudicial to national security or the prevention or detection of serious crime, and without prejudice to the generality of the foregoing, may in particular follow any procedure mentioned in section 33(4) for that purpose.

(3) Where the Tribunal determines any proceedings, complaint or reference brought before or made to it, it shall give —

- (a) a statement that the Tribunal has made a determination in favour of the person making the complaint; or
- (b) a statement that no determination has been made in favour of the person making the complaint.

Tribunal rules

33.— (1) The Chief Justice may make rules regulating —

- (a) the exercise by the Tribunal of the jurisdiction conferred on it by section 30(2); and



(b) any matters preliminary or incidental to, or arising out of, the hearing or consideration of any proceedings, complaint or reference brought before or made to the Tribunal.

(2) Without prejudice to the generality of subsection (1), rules under this section may —

(a) specify the forms of hearing or consideration to be adopted by the Tribunal in relation to particular proceedings, complaints or references, including where applicable, the mode and burden of proof and the admissibility of evidence;

(b) require information about any determination, award, order or other decision made by the Tribunal in relation to any proceedings, complaint or reference to be provided, in addition to any statement under section 32(3) to the person who brought the proceedings or made the complaint or reference to the person representing his or her interests.

(3) Rules made pursuant to this section may provide —

(a) for a person who has brought any proceedings before or made any complaint or reference to the Tribunal to have the right to be legally represented;

(b) for the manner in which the interests of a person who has brought any proceedings before or made any complaint or reference to the Tribunal are otherwise to be represented;

(c) for the appointment in accordance with the rules, by such person as may be determined by the rules, of a person to represent those interests in the case of any proceedings, complaint or reference.

(4) Rules made pursuant to this section may in particular enable or require the Tribunal to proceed in the absence of any person, including the person making the complaint or reference and any legal representative of the person, and to exercise its jurisdiction, and to exercise and perform its powers and duties, including in particular, in relation to the giving of reasons, in such a manner provided for in the rules as prevents or limits the disclosure of particular matters.

(5) Rules made pursuant to this section may make application, with or without modification, of the provision from time to time contained in specified rules of court.



(6) All rules made under this section shall be subject to affirmative resolution of the House of Assembly and the Senate.

PART VIII
MISCELLANEOUS

Amendment of Schedule

34.— (1) The Minister may, by Order, add to or delete from the list of offences contained in the Schedule.

(2) An order made under subsection (1) shall be subject to affirmative resolution of the House of Assembly and the Senate.

False statements

35. A person who, in an application under this Act makes a statement which he or she knows to be false in any material particular commits an offence and is liable upon summary conviction to a fine not exceeding fifteen thousand dollars or to imprisonment for a term not exceeding three years or to both.

Regulations

36.— (1) The Minister may make Regulations prescribing any matter or thing in respect of which it may be expedient to make Regulations for the purpose of carrying this Act into effect.

(2) Without prejudice to the generality of the foregoing, the Minister may make Regulations particularly to —

- (a) prescribe the forms required by this Act;
- (b) to provide for the disclosure of intercepted communications;
or
- (c) to provide for the storage and destruction of intercepted communications.

Code of conduct

37. The Chief Justice may prescribe a code of conduct for authorised officers.



SCHEDULE

(Sections 5(1) and 34)

1. Capital or non-capital murder
2. Manslaughter
3. Treason
4. Kidnapping
5. Robbery
6. Blackmail
7. Fraud
8. Abduction
9. Hijacking
10. Extortion
11. Counterfeiting
12. Corruption
13. Arson
14. An offence contrary to the Proceeds of Crime Act 1993
15. An offence contrary to the Money Laundering (Prevention) Act 2003
16. An offence contrary to the Drugs (Prevention of Misuse) Act 1988
17. An offence contrary to the Firearms Act 2001
18. An offence contrary to the Children and Young Persons Act 1972
19. An offence against a child or minor contrary to Part 1 of Chapter Two of the Criminal Code 2004
20. An offence contrary to the Anti-Terrorism Act 2003
21. Attempting or conspiring to commit, or aiding, abetting, counselling or procuring the commission of, an offence falling within any of the preceding paragraphs.

Passed in the House of Assembly this 1st day of November, 2005.

J. BADEN ALLAIN,
Speaker of the House of Assembly.

Passed in the Senate this 3rd day of November, 2005.

HILFORD DETERVILLE,
President of the Senate.