

Full title	ISPs and maintenance defaulters
Status	In force from 5 January 2018
Applies to	ECS licensees, resellers (referred to as electronic communications service providers or ECSPs)
Summary	The Maintenance Act allows maintenance courts to get assistance from ECSPs in tracking down hard-to-find maintenance defaulters. This advisory sets out the impact on ECSPs and their obligations when interacting with maintenance courts and orders issued under the Maintenance Act.
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1. Introduction

The Maintenance Act allows maintenance officers to apply to maintenance courts for orders requesting information from Electronic Communications Service Providers (ECSPs) in order to trace the whereabouts of maintenance defaulters, specifically those who go to extremes to avoid their maintenance obligations.

This amendment applies to all ISPA members which

- have ECS licences or
- are exempted from having an ECS licence in terms of Chapter 3 of the Electronic Communications Act

(i.e. which fall within the definition of ECSP in the Maintenance Act, which is the same as RICA).

2. Overview of obligation imposed on electronic communications service providers

If a complaint is lodged with a maintenance officer and where all reasonable efforts to locate the whereabouts of the person affected by a maintenance order (i.e. a defaulter) have failed, the maintenance officer may approach the maintenance court for an order directing one or more ECSPs to furnish the court with the contact details of the person in question, where that person is a customer of the ECSP.

3. Complying with orders and procedural issues

Section 7(3) of the Maintenance Act provides for the following steps to be taken by maintenance courts when issuing directions to ECSPs:

- The maintenance court issues an order in the prescribed form directing one or more ECSPs to furnish the court with the contact details of the person in question, where that person is a customer of the ECSP;
- The maintenance court requires that this direction be served upon the ECSP in the prescribed manner (this can be by email, fax or registered post – provided that proof of receipt by the ECSP can be given by the person sending the direction); and,
- The ECSP is required to furnish the court with the information requested in the prescribed manner and within the time period set out in the order.

Following receipt of an order, the ECSP may, in the prescribed manner, apply for:

- an extension of the time period afforded to it for its response; and,
- cancellation of the court's direction on the grounds that it doesn't provide services to the person in question or that the requested information is not available in its records.

The court is in turn required to consider the ECSP's application and notify it of the outcome in the prescribed manner.

4. List of ECSPs

The Department of Justice and Correctional Services holds a list of ECSPs which the maintenance court can consult when trying to figure out which ECSP to send an order to. This is available at <http://www.justice.gov.za/forms/pha/annex-d-escp-list.pdf> (Protection from Harassment Act 17 of 2011).

If you fall within the definition of ECSP please check this list to make sure that you are listed, and your details are correct. If not, let regulatory@ispa.org.za know.

5. Tariffs for dealing with orders

The tariffs payable to ECSPs for the provision of the requested information are currently set at R80 excluding VAT and will either be paid by the person lodging the maintenance complaint or, in the case of insufficient means, the State. Note that – as under the Protection from Harassment Act – some ISPA members have elected not to recover this fee.

6. Forms and processes

The relevant prescribed forms and processes in respect of section 7(3) of the Maintenance Act are:

- [R - Application for Direction in terms of section 7\(3\)\(a\)](#)
- [S - Direction to ECS providers in terms of section 7\(3\)\(b\)](#)
- [T - Information by ECS providers in terms of section 7\(3\)\(b\)](#)
- [U - Application by ECS providers in terms of section 7\(3\)\(e\)](#)
- [V - Outcome of Application in terms of section 7\(3\)\(f\)](#)

7. Penalties

Following the insertion of section 39A (Offences relating to maintenance investigators) any person who wilfully hinders or obstructs a maintenance investigator in the exercise of his/her powers or the performance of his/her duties is liable to a fine or imprisonment not exceeding one year.

8. Conclusion

ECSPs are becoming more and more central to everyday life and the enforcement of everyday legal mechanisms which are far removed from the world of bits and bytes, The Maintenance Amendment Act is the logical extension of existing legal remedies for the handling of maintenance disputes and the location of maintenance defaulters.
