

ACT 101

STATE SECRETS ACT, 1962

ARRANGEMENT OF SECTIONS

SECTION

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ACT 101

STATE SECRETS ACT, 1962¹

AN ACT regarding State secrets and to provide for related matters.

1. Acts prejudicial to the Republic

(1) A person commits an offence who, for a purpose prejudicial to the safety or interests of the Republic,

- (a) approaches, inspects, passes over, or is in the neighbourhood of, or enters a prohibited place;
- (b) makes a sketch, plan, model or note that is calculated to be or might be or is intended to be directly or indirectly useful to a foreign power; or
- (c) obtains, collects, records, publishes or communicates to any other person a secret official code word, or password, or a secret official document or an information that is calculated to be or might be or is intended to be directly or indirectly useful to a foreign power.

1. The Act was assented to on 20th February, 1962.

(2) On prosecution for an offence under subsection (1), it is not necessary to show that the accused person has committed a particular act tending to show a purpose prejudicial to the safety or interests of the Republic, and, although an act of that nature is not proved, that person may be convicted if, from the circumstances of the case, or the conduct, or the known character of that person as proved, it appears that the purpose was a purpose prejudicial to the safety or interests of the Republic.

(3) Where a document or an information relating to or used in a prohibited place, or any thing in that place, or a secret official code word or password is made, obtained, collected, recorded, published or communicated by a person other than a person acting under lawful authority it shall be deemed to have been made, obtained, collected, recorded, published or communicated for a purpose prejudicial to the safety or interest of the Republic unless the contrary is proved by the accused person.

(4) In proceedings against a person for an offence under this section, the fact of having been in communication with, or attempted to communicate with, an agent of a foreign power, whether within or outside the Republic, is evidence of that person having a purpose prejudicial to the safety or interests of the Republic obtained or attempted to obtain information that is calculated to be or might be or is intended to be directly or indirectly useful to a foreign power.

(5) For the purposes of this section, but without prejudice to the generality of subsections (1) to (4), a person shall, unless it is proved to the contrary, be deemed to have been in communication with an agent of a foreign power if

- (a) that person has, either within or outside the Republic, visited the address of an agent of a foreign power or consorted or associated with that agent; or
- (b) either within or outside the Republic, the name or address of, or any other information regarding the agent has been found in the possession of, or has been supplied by that person to any other person, or has been obtained by that person from any other person.

(6) Without prejudice to the generality of subsections (1) to (5), an act done without reasonable excuse by a public officer which amounts to a failure to perform in a proper manner a duty imposed on that public officer under this Act or which is otherwise prejudicial to the efficient operation of this Act constitutes an offence under this Act.

(7) A public officer who commits an offence under subsection (6) is liable to

- (a) dismissal, that is termination of appointment with forfeiture of retirement benefits, or
- (b) removal, that is termination of appointment with or without a reduction in retirement benefits, or
- (c) reduction of rank, that is removal to another grade with an immediate reduction of salary, or
- (d) reduction of salary, that is an immediate adjustment of salary to a lower point on the salary scale attached to the post in question, or
- (e) deferment of increment, that is a postponement of the date on which the next increment is due, with corresponding postponements in subsequent years, or

- (f) stoppage of increment, that is non-payment for a specified period of an increment otherwise due, or
- (g) in the case of a person holding a category D post, suspension from duty with consequent loss of pay and allowances for a period not exceeding fourteen days, or
- (h) a reprimand.

(8) The President is the disciplinary authority for the purposes of subsection (7), but the President may delegate the exercise of the disciplinary authority to a person so appointed.

2. Address of agent of foreign power

An address, whether within or outside the Republic, reasonably suspected of being an address used for the receipt of communications intended for an agent of a foreign power, or an address at which an agent resides, or to which an agent resorts for the purpose of giving or receiving communications, or at which an agent carries on a business, is, for the purposes of this Act, the address of an agent of a foreign power, and communications addressed to the address are communications with the agent.

3. Wrongful communication of information

(1) A person commits an offence who, having possession, or control of a secret official code word or password or a secret official document or information,

- (a) communicates that code word, password, document or information to any other person, other than a person to whom there is a lawful authority to communicate with, or a person to whom it is in the interest of the Republic a duty to communicate it, or
- (b) uses that information for the benefit of a foreign power or in any other manner, or
- (c) retains that document in the possession or control of that person when there does not exist a right to retain it or when it is contrary to the duty of that person to retain it or fails to comply with the directions issued by lawful authority with regard to the return or disposal of that document, or
- (d) fails to take reasonable care of, or so personally acts, as to endanger the safety of that secret official code word or password or that secret official document or information.

(2) A person commits an offence who, having possession or control of a secret official code word or password or secret official document or information

- (a) that relates or is used in a prohibited place or anything that is in that place, or
- (b) that has been made on obtained in contravention of this Act, or
- (c) that has been entrusted in confidence to that person
 - (i) by a person holding office under the Republic or by reason of a position as a person who holds or has held office under the Republic, or

- (ii) as a person who holds or has held a contract made on behalf of the Republic or a contract the performance of which in whole or in part is carried out in a prohibited place, or
- (iii) as a person who is or has been employed under a person who holds or has held that office,

does any of the acts referred to in paragraphs (a), (b), (c), and (d) of subsection (1).

(3) A person commits an offence who, having the possession or control of a document or an information that relates to munitions of war, communicates it directly or indirectly to a foreign power, or in any other manner prejudicial to the safety or interests of the Republic.

(4) A person commits an offence who receives a secret official code word or password or a secret document or an information, knowing or having reasonable grounds to believe, at the time when it was received that the code word, password, document or information is communicated in contravention of this Act, unless it is proved that the communication of the code word, password, document or information was contrary to the desire of that person.

(5) A person commits an offence if that person

- (a) retains for a purpose prejudicial to the safety or interests of the Republic an official document, whether or not completed or issued for use, when that person does not have a right to retain it, or when it is contrary to duty to retain it, or fails to comply with the directions issued by a Government department or a person authorised by the department with regard to the return or disposal of that document, or
- (b) allows any other person to have possession of an official document issued for the use of that person alone, or communicates a secret official code word or password so issued, or, without lawful authority or excuse, has possession of an official document or secret official code word or password issued for the use of any other person, or on obtaining possession of an official document by finding or otherwise, neglects or fails to restore it to the person or authority by whom or for whose use it was issued, or to a police officer.

4. Unauthorised use of uniforms, forgery and other offences

(1) A person commits an offence who, for the purpose of gaining admission, or of assisting any other person to gain admission, to a prohibited place, or for any other purpose prejudicial to the safety or interests of the Republic,

- (a) uses or wears, without lawful authority, any naval, army, air force, police or other official uniform or a uniform so nearly resembling any of those uniforms as to be calculated to deceive, or poses as a person who is or has been entitled to use or wear any of those uniforms, or
- (b) orally, or in writing in a declaration or an application, or in a document signed by that person or on behalf of that person knowingly makes or connives at the making of a false statement or an omission, or

- (c) forges, alters or tampers with a passport or any naval, army, air force, police or official pass, permit, certificate, licence or other document of a similar character referred to in this section as an official document, or uses, or has possession of that forged, altered or irregular official document, or
- (d) impersonates or poses as a person holding, or in the employment of a person holding office under the Republic, or poses as a person to whom, an official document or a secret official code word or password has been duly issued or communicated, or with intent to obtain an official document, a secret official code word or password, whether for personal use or for any other person, knowingly makes a false statement, or
- (e) uses, or has possession or control, without the authority of the Government department or the authority concerned, a die, seal or stamp of or belonging to, or used, made, or provided by a Government department, or by any diplomatic, naval, army, or air force authority appointed by or acting under the authority of the President, or a die, seal or stamp so nearly resembling that die, seal or stamp as to be calculated to deceive, or counterfeits that die, seal or stamp, or uses, or has possession, or control of that counterfeited die, seal or stamp.

(2) A person who, without lawful authority or excuse, manufactures or sells, or has possession for sale, that die, seal or stamp, commits an offence under this Act.

5. Interfering with officers of the security agencies

(1) A person in the vicinity of a prohibited place shall not obstruct, knowingly mislead or otherwise interfere with or impede a police officer, or a member of the Armed Forces engaged on guard, sentry, patrol or any other similar duty in relation to the prohibited place.

(2) A person who acts in contravention of, or fails to comply with, subsection (1) commits an offence.

6. Production of telegrams

(1) Where it appears to the Attorney-General to be expedient in the public interest, the Attorney-General may, by warrant personally signed by the Attorney-General, require a person who owns or controls a telegraphic cable or wire, or an apparatus for wireless telegraphy, used for the sending or receipt of telegrams to or from a place out of the Republic, to produce to the Attorney-General or to a person named in the warrant, the originals and transcripts, of telegrams, or of telegrams of a specified class or description, or of telegrams sent from or addressed to a specified person or place, sent to or received from a place outside the Republic by means of that cable, wire or apparatus and any other papers relating to that telegram.

(2) A person who, on being required to produce the original or transcript or paper referred to in subsection (1) refuses or neglects to do so commits an offence, and is for each offence, liable on summary conviction to a term of imprisonment not exceeding three months, or to a fine not exceeding one hundred and fifty penalty units, or to both the imprisonment and the fine.

7. Harbours spies

A person commits an offence who

- (a) knowingly harbours a person whom the first-mentioned person knows, or has reasonable grounds for supposing, to be a person who is about to commit or who has committed an offence under this Act, or
- (b) knowingly permits to meet or assemble in any premises in the occupation or under the control of the first-mentioned person any of those persons,
- (c) having harboured that person, or permitted to meet or assemble in any premises in the occupation or under the control of any of those persons, wilfully omits or refuses to disclose to a senior police officer an information that it is in that person's power to give in relation to any of those persons.

8. Attempts, incitements

A person who attempts to commit an offence under this Act, or solicits or incites or endeavours to persuade any other person to commit an offence, or aids or abets or does an act preparatory to the commission of an offence under this Act, commits an offence and is liable to the same punishment and to be proceeded against in the same manner, as if that person had committed the offence.

9. Arrest without warrant

(1) A person who is found committing an offence under this Act, or who is reasonably suspected of having committed, or having attempted to commit, or being about to commit, an offence, may be arrested without a warrant and detained by a police officer for a period not exceeding forty-eight hours.

(2) A person arrested under subsection (1) shall be brought before a District Magistrate on the expiry of the period of forty-eight hours whether or not the police enquiries are completed.

10. Search warrants

(1) If a District Magistrate is satisfied by information on oath that there is a reasonable ground for suspecting that an offence under this Act has been or is about to be committed, the District Magistrate may grant a search warrant authorising a police officer named in the warrant

- (a) to enter any premises or place named in the warrant, if necessary by force, and
- (b) to search the premises or place and a person found in the premises, and
- (c) to seize a document, or anything that is evidence of an offence under this Act having been or being about to be committed, that the police officer may find on the premises or place or on that person, and with regard to or in connection with which the police officer has reasonable grounds for suspecting that an offence under this Act has been or is about to be committed.

(2) Where it appears to a senior police officer that the case is one of great emergency and that in the interest of the Republic immediate action is necessary, the senior police officer may by written order signed personally by that officer give to a police officer the like authority as may be given by the warrant of a District Magistrate under this section.

11. Consent of Attorney-General to prosecutions

(1) A prosecution for an offence under this Act shall not be instituted except by or with the consent of the Attorney-General.

(2) A person charged with an offence under this Act may be arrested, or a warrant for arrest may be issued and executed, and that person may be remanded in custody or on bail, although the consent of the Attorney-General to the institution of a prosecution for the offence has not been obtained, but further or any other proceedings shall not be taken until that consent has been obtained.

12. Trial of offences committed outside the Republic

An act, omission or a thing that would, by reason of this Act, be punishable as an offence if committed in the Republic is, if committed outside the Republic, an offence against this Act, triable and punishable in the Republic

- (a) where the offender at the time of the commission was a citizen of the Republic within the meaning the Citizenship Act, 2000 (Act 591);
- (b) where a code word, password, document, an information or any other thing in respect of which an offender is charged was obtained by the offender or depends on information that the offender obtained, while owing allegiance to the Republic of Ghana as by law established.

13. Place of offence

(1) For the purposes of the trial of a person for an offence under this Act, the offence shall be deemed to have been committed

- (a) at the place in which the offence actually was committed, or
- (b) at a place in the Republic in which the offender is found.

(2) In addition to and without prejudice to the powers of a Court to order the exclusion of the public from the proceedings if, in the course of proceedings before the Court against a person for an offence under this Act or the proceedings on appeal, application is made by the prosecution, that all or a portion of the public shall be excluded during a part of the hearing, the Court may make an order to that effect, but the passing of sentence shall take place in public.

(3) An order shall not be made under subsection (2) unless the Court is satisfied that the publication of an order to be given or of a statement to be made in the course of the proceedings would be prejudicial to the interests of the Republic.

(4) Where an offence under this Act is committed by a company or corporation, every director and officer of the company or corporation shall be deemed to have committed that offence unless it is proved that the act or omission constituting the offence took place without the knowledge or consent of that officer or director.

14. Penalties

Where a specific penalty is not provided in this Act, then the offence is an indictable offence and a person convicted of that offence is liable on conviction on indictment to a term of imprisonment not exceeding fourteen years; but at the election of the Attorney-General that person may be prosecuted summarily in the manner provided by the Criminal and Other Offences (Procedure) Act, 1960 (Act 30) for summary trial and, if so prosecuted, is punishable by a fine not exceeding two hundred and fifty penalty units or to a term of imprisonment not exceeding twelve months, or to both the fine and the imprisonment.

15. Interpretation

(1) In this Act, unless the context otherwise requires,

“agent of a foreign power” includes a person who is or has been or is reasonably suspected of being or having been employed by a foreign power whether directly or indirectly for the purpose of committing an act whether within or outside the Republic prejudicial to the safety or interest of the Republic or who has or is reasonably suspected of having within or outside the Republic, committed, or attempted to commit that act in the interest of a foreign power;

“document” includes an article, a model, note, plan or sketch and a part of a document;

“Minister” means the Minister responsible for Internal Security;

“model” includes a design, pattern and specimen;

“munitions of war” means arms, ammunition, implements or munitions of war, army, naval or air stores, or any articles deemed capable of being converted into, or made useful in the production of any of those things;

“offence” includes an act, omission, or any other thing that is punishable under this Act;

“office under the Republic” includes a public office, an office or employment in or under a department or branch of the Government and an office or employment in, on or under a board, commission, corporation or any other body that is an agent of the Government;

“prohibited place” means

- (i) a work of defence belonging to or occupied or used by or on behalf of the Republic including arsenals, naval, army or air force establishments or stations, factories, dockyards, mines, minefields, camps, ships, aircraft, telegraph, telephone, wireless or signal stations or offices, and places used for the purpose of building, repairing, making or storing any munitions of war or any sketches, plans, models, or documents relating to any of them, or for the purpose of getting any metals, oil or minerals for use in time of war;
- (ii) a place not belonging to the Republic where any munitions of war or any sketches, models, plans or documents relating to any of them, are being made, repaired, gotten or stored under contract with or with a person acting on behalf of the Republic;

- (iii) a place that is declared by an executive instrument by the President to be a prohibited place on the grounds that information with respect to or damage to, that place would be useful to a foreign power;

“**sketch**” includes a mode of representing a place or thing;

“**senior police officer**” means an officer of the Police Service not below the rank of Assistant Superintendent or a person on whom the powers of a senior police officer are for the purposes of this Act conferred by the President.

(2) For the purposes of this Act,

- (a) expressions referring to communicating or receiving include a communicating or receiving, whether in whole or in part, and whether the document or information itself or the substance, effect, or description of the document or information only is communicated or received;
- (b) expressions referring to obtaining or retaining a document, include the copying or causing to be copied the whole or a part of the document; and
- (c) expressions referring to the communication of a document include the transfer or transmission of the document.

16. Repeal

*Spent.*²

2. The section provided for the repeal of the Official Secrets (Northern and Upper Regions) Ordinance (Cap. 62) and section 192 of the Criminal Code (Act 29).

