

OFFICIAL SECRETS ACT

Act 13 of 1972 – 26 June 1972

ARRANGEMENT OF SECTIONS

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OFFICIAL SECRETS ACT

1. Short title

This Act may be cited as the Official Secrets Act.

2. Interpretation

(1) In this Act—

“agent of a foreign State” includes a person who is or has been employed, or is reasonably suspected of being or having been employed, by a foreign State, either directly or indirectly, for the purpose of committing an act, within or outside Mauritius, likely to prejudice the safety or interests of Mauritius, or who has, or is reasonably suspected of having, within or outside Mauritius, committed or attempted to commit such an act in the interests of a foreign State;

“armed force” means any body, contingent or detachment of the armed forces of Mauritius or such force of another State as may be prescribed by the Minister;

“code word” means an official, secret or classified code, code word, password, sign or cipher, including a group of letters or figures or both constituting part of a code;

“disaffected person” includes a person carrying on a subversive activity;

“Minister” means the Minister to whom responsibility for the subject of defence and internal security is assigned;

“munitions” means arms, ammunition, implements or stores of the armed forces or the Police Force, or any article capable of being converted into any of those arms, ammunition, implements or stores or used in their production;

“office under the Government” means any office or employment in or under the Government or in or under any department or branch of the Government, and any office or employment in, on or under any board, commission, corporation or other body that is an agent, or emanation of the Government, whether the office or employment is within or outside Mauritius;

“official document” includes a passport, an armed force, police or official pass, permit, certificate, licence or other document of a similar character whether or not it has been completed or issued for use;

“official seal” includes any seal, die, stamp of or belonging to, or used, made or provided by any Government Department, diplomatic authority or armed force, or any article of a similar character;

“plan” includes any sketch, model, design or pattern, and any specimen, reproduction or photograph of the document;

“prohibited place” means a place—

- (a) belonging to or occupied or used by, or on behalf of Government, which is used for or in connection with the maintenance of public security, including arsenals, establishments or stations of the armed forces or the Police Force, factories, dockyards, mines, minefields, camps, ships, aircraft, telegraph, telephone, wireless or signal stations of offices, and places used for the purpose of building, repairing, making or storing any munitions or any plans, or for the purpose of obtaining any metals, oil or minerals for use in time of war or public emergency;
- (b) not belonging to Government, where any munitions or any plans are being made, repaired, received or stored under contract with, or with any person acting on behalf of, Government;
- (c) prescribed by the Minister, on the ground that information relating to the place, damage to it or interference with it is likely to prejudice the safety and interests of Mauritius;

“telegram” means any communication or visual image transmitted or intended for transmission by telegraph or wireless apparatus;

“uniform” includes the headgear, badge, brassard, clothing equipment and every article forming part of the uniform of the Police Force or of any armed force or of any other official uniform or of any uniform likely to be mistaken for any of those uniforms.

(2) In this Act—

- (a) expressions referring to obtaining, receiving, collecting, retaining, recording, making use of, publishing or communicating a code

word, plan, article, document or information include any obtaining, receiving, retaining, recording, making use of, publishing or communicating whether in whole or in part and whether the code word, plan, article, document or information itself or only its substance, effect or description is obtained, received, collected, retained, recorded, made use of, published or communicated;

- (b) expressions referring to obtaining or retaining a code word, plan, article, document or information include copying or causing to be copied the whole or any part of any code word, plan, article, document or information; and
- (c) expressions referring to the communication of a code word, plan, article, document or information include the transfer or transmission of the code word, plan, article, document or information.

3. Acts prejudicial to Mauritius

(1) Any person who, for any purpose or in any manner likely to prejudice the safety or interests of Mauritius—

- (a) approaches, inspects, enters, passes over, or is in the neighbourhood of, a prohibited place;
- (b) makes a plan that is calculated or intended to be, or might be, directly or indirectly, of use to a foreign State or disaffected person; and
- (c) obtains, receives, collects, retains, records, makes use of, publishes or communicates a code word, plan, article, document or information which is calculated or intended to be or might be, directly or indirectly, of use to a foreign State or disaffected person,

shall commit an offence.

(2) Any person who has in his possession or under his control a code word, plan, article, document or information which—

- (a) relates to, or is used in, a prohibited place;
- (b) relates to munitions;
- (c) has been made or obtained in contravention of this Act;
- (d) he knows, or has reasonable grounds for believing, has been communicated to him in contravention of this Act;
- (e) has been entrusted in confidence to him—
 - (i) by any person holding office under the Government;
 - (ii) owing to his position as a person who holds or has held office under the Government or who is or was a party to a contract which was made on behalf of the Government or which, in whole or in part, is or was executed in a prohibited place; or

(iii) owing to his position as a person who is or has been employed by a person who is or was a party to a contract specified in subparagraph (ii); or

(f) he has obtained or to which he has had access owing to his position as a person who held office under the Government,

and who for any purpose or in any manner likely to prejudice the safety or interests of Mauritius—

- (i) makes use of the code word, plan, article, document or information;
- (ii) retains the code word, plan, article, document or information in his possession or under his control;
- (iii) fails to comply with any directions issued by a lawful authority with regard to the return or disposal of the code word, plan, article, document or information;
- (iv) communicates the code word, plan, article, document or information to any person, other than a person to whom he is authorised to communicate it or to whom it is his duty to communicate it; or
- (v) fails to take reasonable care, or, so conducts himself, so as to endanger the safety of the code word, plan, article, document or information,

shall commit an offence.

(3) Any person who, without lawful authority, takes a photograph of, or in, a prohibited place shall commit an offence.

(4) Any person 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 or in any manner likely to prejudice the safety or interests of Mauritius—

- (a) without lawful authority, uses or wears any uniform or falsely represents himself to be a person who is, or has been entitled to use or wear such uniform;
- (b) in any oral or written declaration, application or document, knowingly makes, or connives at the making of, any false statement;
- (c) counterfeits, forges, alters or tampers with any official document, official seal or code word;
- (d) has in his possession or under his control, or makes use of, any official document, official seal or code word which has been counterfeited, forged, altered or tampered with;
- (e) without lawful authority, has in his possession or under his control, or makes use of, any official document, official seal or code word; or

- (f) personates, or falsely represents himself to be, a person holding, or in the employment of a person holding, office under the Government or to be a person to whom an official document, official seal or code word has been lawfully issued or communicated,

shall commit an offence.

4. Reports of Cabinet proceedings

(1) Any person who in any manner publishes a report of, or a comment on, any matter and alleges, expressly or impliedly, that the report or comment, as the case may be, relates to what took place at a meeting of the Cabinet shall commit an offence and shall, on conviction, be liable to imprisonment for a term of not less than one month and not more than 12 months together with a fine not exceeding 2,000 rupees, unless he proves that the publication was made with lawful authority or as a result of information obtained from a person authorised to communicate it.

(2) Any person who in any manner publishes a document which purports to be, in whole or in part, a document which was submitted to the Cabinet or was or is intended to be submitted to the Cabinet by or on behalf of any Ministry or Government Department shall, unless he shows that he had obtained the prior authority in writing of the Secretary to the Cabinet to do so, commit an offence.

(3) Part XII of the Criminal Procedure Act and the Probation of Offenders Act shall not apply to prosecutions under this section.

[S. 4 amended by Act 15 of 1989.]

5. Interference with police officers or armed forces

Any person who, in the vicinity of a prohibited place, obstructs, knowingly misleads or otherwise interferes with or impedes a police officer, member of the armed forces or other person who is engaged on guard, sentry, patrol or other similar duty in relation to the prohibited place, shall commit an offence.

6. Production of telegrams

(1) Where it appears to the Minister that it is expedient for the protection of the safety or interest of Mauritius to do so, he may, by warrant under his hand, require a person who owns or controls any telegraph or wireless apparatus used for the sending or receipt of telegrams to or from any place outside Mauritius, to produce to him, or to any person named in the warrant, the originals and transcripts of all telegrams or of telegrams of any specified class or description or of telegrams sent from or addressed to any specified person or place, sent to or received from any place outside Mauritius, as well as any other information relating to the telegrams as he may require.

(2) Any person who refuses or neglects to comply with a request made under subsection (1) shall commit an offence and shall, on conviction, be liable to imprisonment for a term not exceeding 12 months.

7. Harbours

Any person who—

- (a) harbours any person whom he knows, or has reasonable grounds for believing, to be a person who is about to commit or who has committed an offence under this Act; or
- (b) permits any person whom he knows, or has reasonable grounds for believing, to be a person who is about to commit or who has committed an offence under this Act, to meet or assemble with any other person in any premises under his occupation or control,

shall commit an offence.

8. Offences

(1) Any person who attempts to commit, or does any act preparatory to the commission of, an offence under this Act shall commit an offence.

(2) Any person who solicits, incites or endeavours to persuade another person to commit an offence under this Act shall, whether or not the solicitation, incitement or endeavour succeeds in its purpose, commit an offence.

(3) Any person who commits an offence under this section shall, on conviction, be liable to the penalty applicable to the principal or completed offence, as the case may be.

9. Offences committed outside Mauritius

Any act or omission that would be punishable as an offence under this Act if it occurred in Mauritius shall, if it occurs outside Mauritius, be an offence under this Act, triable and punishable in Mauritius, where—

- (a) the offender is, at the material time, a citizen of Mauritius or a person holding office under the Government; or
- (b) the code word, plan, article, document, information or other matter, in respect of which an offender is charged was obtained by him, or relates to information obtained by him, while he was a citizen of Mauritius or a person holding office under the Government.

10. Consent to prosecution

(1) A prosecution for an offence under this Act shall not be instituted except by or with the consent of the Director of Public Prosecutions.

(2) Any person charged with an offence under this Act may be arrested, or a warrant for his arrest may be issued and executed, and he may be remanded in custody or on bail, notwithstanding that the consent of the Director of Public Prosecutions to the institution of a prosecution for the offence has not been obtained, but no further proceedings shall be taken until that consent has been obtained.

11. Place of offence

For the purposes of the trial of a person for an offence under this Act, the offence shall be deemed to have been committed at the place in which it was actually committed or at any place in Mauritius in which the offender may be found.

12. Exclusion of public from trial

(1) Without prejudice to any power that a Court may possess to order the exclusion of the public from any proceedings, the Court may, subject to subsection (2), in any proceedings for an offence under this Act or on appeal from such proceedings, order that all or any section of the public shall be excluded during all or any part of the proceedings, on application by the Director of Public Prosecutions, on the ground that the publication of any matter to be disclosed in the proceedings is likely to prejudice the safety or interests of Mauritius.

(2) Notwithstanding subsection (1), the Court shall always pass sentence in public.

13. Proof of communication with agents of foreign states

(1) Where proceedings are instituted against any person for an offence under section 3 (1) (c), the fact that he has communicated or attempted to communicate with an agent of a foreign State, whether within or outside Mauritius, shall be evidence that person has, for a purpose likely to prejudice the safety or interests of Mauritius, obtained or received information which is calculated or intended to be, or might be, directly or indirectly, of use to a foreign State.

(2) For the purposes of subsection (1) and without prejudice to the generality of that subsection, a person shall be deemed to have communicated or attempted to communicate with an agent of a foreign State if, within or outside Mauritius—

- (a) he has consorted or associated with, or visited the address of, an agent of a foreign State; or
- (b) he has obtained or been supplied with or has been found in possession of the name or address of, or any other information relating to, an agent of a foreign State.

(3) Any address, whether within or outside Mauritius, at which an agent of a foreign State resides or carries on business or to which he resorts for the purpose of giving or receiving any communication, or which is used for the receipt or despatch of any communication intended for an agent of a foreign State, shall, for the purposes of this section, be deemed to be the address of an agent of a foreign State and any communication sent to that address to be a communication with the agent.

14. Proof of acts or omissions

Where proceedings are instituted against any person for an offence under this Act and it is alleged that any act or omission occurred for a purpose or

in a manner likely to prejudice the safety or interests of Mauritius, the Court may infer that the act or omission occurred for that purpose or in that manner from the circumstances of the case or the conduct or known character of that person which are proved in the course of the proceedings.

15. Presumption as to communication

Where proceedings are instituted against any person for an offence under this Act, a code word, plan, article, document or information relating to or used in any prohibited place which is made, obtained, received, collected, retained, recorded, used, published or communicated by a person acting without lawful authority, shall be deemed to have been made, obtained, received, collected, retained, recorded, used, published or communicated for a purpose or in a manner likely to prejudice the safety or interests of Mauritius.

16. Arrest without warrant

(1) Any person who is found committing an offence under this Act, or who is reasonably suspected of having committed or of being about to commit an offence under this Act, may be arrested without a warrant.

(2) A person arrested under subsection (1) shall be brought before a Court within 48 hours of his arrest.

17. Search warrant

(1) Where a Magistrate is satisfied by information on oath that there are reasonable grounds for suspecting that an offence under this Act has been or is about to be committed, he may issue a search warrant authorising any police officer named in it to—

- (a) enter at any time any premises or place named in the warrant;
- (b) search the premises or place and every person found therein; and
- (c) seize any plan, article, or document, or anything that is or may be evidence of an offence under this Act having been or being about to be committed.

(2) Notwithstanding subsection (1), where it appears to a police officer, not below the rank of Superintendent, that the case is one of great urgency and that, for the protection of the safety and interests of Mauritius, immediate action is necessary, he may, by a written order under his hand, give to any police officer the same powers that may be given by a warrant of a Magistrate under subsection (1).

18. Penalties

Any person who commits an offence under this Act for which no penalty is specifically provided shall, on conviction, be liable to penal servitude for a term not exceeding 15 years.