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Official Secrets Act, 1968

Act 30 of 1968

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Official Secrets Act, 1968

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Official Secrets Act, 1968

Act 30 of 1968

Assented to on 29 October 1968

Commenced on 6 September 1968

[This is the version of this document at 1 December 1998.]

An Act to provide for the protection of official secrets from disclosure.

1. Short title

This Act may be cited as the Official Secrets Act, 1968.

2. Interpretation

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

“**foreign agent**” includes any person who is or has been or is reasonably suspected of being or having been—

- (a) directly or indirectly employed by a state other than Swaziland for the purpose of committing in Swaziland or elsewhere an act prejudicial to the safety or interests of Swaziland, or who has or is reasonably suspected of having committed or attempted to commit such act in Swaziland or elsewhere in the interests of a state other than Swaziland; or
- (b) acting in the furtherance of the designs of any association of people which has as one of its objects the overthrow of the Government or the government of any other state with which Swaziland is not at war, otherwise than by lawful means;

“**magistrate**” means a person appointed to preside over a court established under the Magistrates Courts Act, [No. 66 of 1938](#);

“**model**” includes any design, pattern or specimen;

“**munitions of war**” means any article, material or device or any part thereof, whether actual or proposed, intended or adapted for use in war or the defence of Swaziland, or capable of being adapted for such use;

“**prohibited place**” means any—

- (a) work of defence belonging to or occupied or used by or on behalf of the Government including any—
 - (i) arsenal, military or air force establishment or station, factory, camp or aircraft;
 - (ii) telegraph, telephone, wireless or signal station or office; and
 - (iii) place used for building, repairing, making or keeping munitions of war or any sketch, plan, model or document relating thereto or for obtaining any metals, oil or minerals of use in time of war;
- (b) place where any munitions of war or any sketch, plan, model or document relating thereto is being built, repaired, made, kept or obtained under contract with or on behalf of the Government or of the government of any other country; or
- (c) place declared by the Prime Minister, by notice published in the *Gazette*, as a prohibited place for the purposes of this Act;

“**sketch**” includes any photographic or other representation of any place or thing.

- (2) In this Act, unless the context otherwise indicates any reference to—
- (a) communicating or receiving anything includes a reference to communicating or receiving any part or the substance, effect or description thereof;
 - (b) obtaining or retaining anything includes a reference to obtaining or retaining any part or copying or causing to be copied, or obtaining or retaining a copy of, the whole or any part thereof, whether by photography or otherwise; and
 - (c) communicating anything includes a reference to the transmission or transfer thereof.

3. **Penalty for spying**

Any person who, for any purpose prejudicial to the safety or interests of Swaziland—

- (a) approaches, inspects, passes over or is in the neighbourhood of or enters any prohibited place;
- (b) makes any sketch, plan, model or note which is likely to be directly or indirectly useful to an enemy; or,
- (c) obtains, collects, records or publishes or communicates to any person any secret official code or password, or any sketch, plan, model, article or note or other document or information which is likely to be directly or indirectly useful to an enemy;

shall be guilty of an offence and liable, on conviction, to imprisonment not exceeding fifteen years.

4. **Communication of certain information prohibited**

- (1) Any person who has in his possession or under his control any secret official code or password, or any sketch, plan, model, article, note, document or information which relates to anything in a prohibited place or is used in a prohibited place, or which has been made or obtained in contravention of this Act, or which has been entrusted in confidence to him by any person holding office under the Government, or which he has obtained or to which he has had access owing to his position as a person who holds or has held such office, or as a person who holds or has held a contract made on behalf of the Government, or a contract the performance of which in whole or in part is carried out in a prohibited place, or as a person who is or has been employed under a person who holds or has held such office or contract, and who—
- (a) communicates such code, password, sketch, plan, model, article, note, document or information to any person, other than a person to whom he is authorized to communicate it or a person to whom it is, in the interests of Swaziland, his duty to communicate it;
 - (b) uses the information in any manner or for any purpose prejudicial to the safety or interests of Swaziland;
 - (c) retains the sketch, plan, model, article, note or document in his possession or under his control when he has no right to retain it or when it is contrary to his duty to retain it, or fails to comply with any directions issued by lawful authority with regard to the return or disposal thereof; or
 - (d) fails to take proper care of or so conducts himself as to endanger the safety of such sketch, plan, model, article, note, document, code, password or information;

shall be guilty of an offence and liable, on conviction, to a fine not exceeding one thousand emalangenis or imprisonment not exceeding five years, or both.

- (2) Any person who has in his possession or under his control any sketch, plan, model, article, note, document or information which relates to munitions of war or any military or police matter and who publishes it or directly or indirectly communicates it, or its contents or any part thereof, to any person in any manner or for any purpose prejudicial to the safety or interests of Swaziland, shall

be guilty of an offence and liable, on conviction, to a fine not exceeding one thousand five hundred emalangeni or imprisonment not exceeding seven years, or both.

- (3) For the purposes of subsection (3), “police matter” means any matter relating to the preservation of the internal security of Swaziland or the maintenance of law and order by the Royal Swaziland Police.
- (4) Any person who receives any secret official code or password, or any sketch, plan, model, article, note, document or information, or any copy thereof, knowing or having reasonable grounds to believe, at the time when he receives it, that such code, password, sketch, plan, model, article, note, document or information is communicated to him in contravention of this Act shall, unless he proves that the communication thereof to him was contrary to his desire, be guilty of an offence and liable, on conviction, to the penalties prescribed in subsection (1).

5. Certain acts prejudicial to the safety or interests of Swaziland prohibited

- (1) Any person who, for the purpose of gaining, or assisting any other person to gain, admission to a prohibited place or for any other purpose prejudicial to the safety or interests of Swaziland—
 - (a) without lawful authority, uses or wears any police or other official uniform of Swaziland or any uniform so closely resembling it as to be calculated to deceive, or falsely represents himself to be a person who is or has been entitled to use or wear any such uniform;
 - (b) orally or in writing in any declaration or application, or in any document signed by him or on his behalf, knowingly makes any false statement or omits any relevant fact;
 - (c) forges, alters or tampers with any official document or uses or has in his possession any forged, altered or irregular official document;
 - (d) impersonates or falsely represents himself to be a person holding, or in the employment of a person holding office under the Government, or to be or not to be a person to whom an official document or a secret official code or password has been duly issued or communicated or, with intent to obtain an official document or any secret official code or password, whether for himself or for any other person, knowingly makes any false statement; or
 - (e) uses or has in his possession or under his control, without lawful authority, any official die, seal or stamp of Swaziland or any die, seal or stamp so closely resembling any such official die, seal or stamp as to be calculated to deceive, or counterfeits any such official die, seal or stamp, or uses or has in his possession or under his control any such counterfeited die, seal or stamp;

shall be guilty of an offence and liable, on conviction, to a fine not exceeding one thousand emalangeni or imprisonment not exceeding five years, or both.

- (2) A person who—
 - (a) retains for any purpose prejudicial to the safety or interests of Swaziland any official document, whether or not completed or issued for use when he has no right to retain it or when it is contrary to his duty to retain it, or fails to comply with any direction issued by lawful authority with regard to the return or disposal thereof;
 - (b) allows any other person to have possession of any official document issued for his use alone, or communicates to any person any secret official code or password so issued, or without lawful authority or excuse has in his possession any official document or secret official code or password issued for the use of some person other than himself or, on obtaining possession of any official document, whether by finding or otherwise, neglects or fails to hand it over to the person or authority by whom or for whose use it was issued or to a police officer; or
 - (c) without lawful authority or excuse, manufactures or sells, or has in his possession for sale any such die, seal or stamp;

shall be guilty of an offence and liable, on conviction, to the penalties prescribed in subsection (1).

- (3) In this section—

“official document” means any passport, official pass, permit, certificate, licence or other document.

6. Obstructing persons on guard at prohibited places

Any person who, in the vicinity of any prohibited place, obstructs, knowingly misleads or otherwise interferes with any person engaged on guard, sentry, patrol or other similar duty in relation to such prohibited place, shall be guilty of an offence and liable, on conviction, to a fine not exceeding one hundred emalangeni or imprisonment not exceeding six months, or both.

7. Harboursing or concealing certain persons and failing to report information relating to foreign agents

Any person who—

- (a) knowingly harbours or conceals any person whom he knows or has reason to believe to be a person who is about to commit or who has committed an offence against this Act, or knowingly permits any such person to meet or assemble in any premises in his occupation or under his control;
- (b) having harboured or concealed any such person, or permitted such persons to meet or assemble in any premises in his occupation or under his control, wilfully omits or refuses to disclose to any police officer any information it is in his power to give in relation to any such person; or,
- (c) is aware that any foreign agent or any person who has been or is in communication with a foreign agent, whether in Swaziland or elsewhere, is in Swaziland, and fails forthwith to report to any police officer the presence of, or any information it is in his power to give in relation to, any such foreign agent or person;

shall be guilty of an offence and liable, on conviction, to a fine not exceeding four hundred emalangeni or imprisonment not exceeding twelve months, or both.

8. Communication with a foreign agent is proof of certain facts

- (1) If, in any prosecution against any person for an offence under section 3 or 4, it is proved that he has been in communication with, or attempted to communicate with, a foreign agent in Swaziland or elsewhere, it shall be presumed unless the contrary is proved, that he has, for a purpose prejudicial to the safety or interests of Swaziland, obtained or attempted to obtain information which is likely to be directly or indirectly useful to an enemy.
- (2) For the purposes of subsection (1)—
 - (a) unless he proves the contrary, a person shall be presumed to have been in communication with a foreign agent if—
 - (i) he has, in Swaziland or elsewhere, visited the address of a foreign agent or associated with him; or,
 - (ii) in Swaziland or elsewhere, the name or address of, or any other information regarding, a foreign agent has been found in his possession or under his control, or has been supplied by him to any other person or has been obtained by him from any other person; and
 - (b) any address, in Swaziland or elsewhere, reasonably suspected of being an address used for the receipt of communications intended for a foreign agent, or at which a foreign agent resides, or to which he resorts for the purpose of giving or receiving communications, or at which he carries on any business, shall be deemed to be the address of a foreign agent, and any person who addresses communications to such address shall be deemed to have been in communication with a foreign agent.

9. Proof of purpose prejudicial to safety or interests of Swaziland

If, in any prosecution under this Act upon a charge of—

- (a) committing an act for a purpose prejudicial to the safety or interests of Swaziland, it appears, from the circumstances of the case or the conduct of the accused, that his purpose was a purpose prejudicial to the safety or interests of Swaziland, it shall be presumed, unless the contrary is proved, that the purpose for which such act was committed is a purpose prejudicial to the safety or interests of Swaziland.
- (b) making, obtaining, collecting, recording, publishing or communicating anything for a purpose prejudicial to the safety or interests of Swaziland, it is proved that it was made, obtained, collected, recorded, published or communicated by any person other than a person acting under lawful authority, it shall be presumed unless the contrary is proved, that the purpose for which it was made, obtained, collected, recorded, published or communicated, is a purpose prejudicial to the safety or interests of Swaziland.

10. Special power of commissioner of police

Where the commissioner of police is satisfied that there is reasonable ground for suspecting that an offence under section 3 or 4 has been committed and for believing that any person is able to furnish information as to such offence, or suspected offence, he may authorize a superintendent of police, or any police officer of the rank of inspector or above, to require the person believed to be able to furnish information to give any information in his power relating to such offence or suspected offence and if so required to make a tender of his reasonable expenses to attend at such reasonable time and place as may be specified by such superintendent or other officer; and if any person so required to give information or to attend, fails to comply with such requirement he shall be guilty of an offence and liable, on conviction, to a fine not exceeding one hundred emalangeneni or imprisonment not exceeding six months, or both.

11. Search warrants

- (1) If a magistrate is satisfied under oath that there is reasonable ground for suspecting that an offence under this Act has been, or is about to be, committed, he may grant a search warrant authorizing any policeman named therein to enter at any time any premises or place named in such warrant, if necessary by the use of reasonable force, and to search such premises or place and every person found therein, and to seize any sketch, plan, model, article, note or document, or anything of a like nature which is evidence of an offence under this Act having been or being about to be committed, which he may find on such premises or place or on any such person, and with regard to or in connexion with which he has reasonable ground for suspecting that an offence under this Act has been or is about to be committed.
- (2) If it appears to the commissioner of police that the case is one of great emergency and that in the interests of Swaziland immediate action is necessary, he may, by written order under his hand, give any policeman the like authority as may be given by the warrant of the magistrate under this section.

12. Restriction on prosecution

No prosecution for any offence under this Act shall be instituted except by or with the consent of the Attorney-General:

Provided that a person charged with such offence may be arrested, or a warrant for his arrest may be issued and executed, and any such person may be remanded in custody or on bail, notwithstanding that the consent of the Attorney-General to the institution of a prosecution for such offence has not been obtained, but no further or other proceedings shall be taken until such consent has been obtained.

13. Extra-territorial application

This Act shall also apply in respect of any act constituting an offence under the Act committed outside Swaziland by any citizen of Swaziland or any person domiciled in Swaziland or employed by the Government.