OFFICIAL SECRETS

CHAPTER 14:01

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OFFICIAL SECRETS

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An Act to provide against the Publication of Official Secrets

[16TH MAY, 1913]

3 of 1913
13 of 1922
6 of 1923
1 of 1957, s. 6 and 2nd Sch.
G.N.22/1963
73/1964(M)
137/1966

1. This Act may be cited as the Official Secrets Act. Short title

2. In this Act unless the context otherwise requires— Interpretation

Any reference to a place belonging to the Government includes a place belonging to any department of the Government whether the place is or is not actually vested in the Government;

expressions referring to communicating or receiving include any communicating or receiving, whether in whole or in part, and whether the sketch, plan, model, article, note, document, or information itself or the substance, effect, or description thereof only be communicated or received; expressions referring to obtaining or retaining any sketch, plan, model, article, note, or document, include the copying or causing to be copied the whole or any part of any sketch, plan, model, article, note, or document, and expressions referring to the communication of any sketch, plan, model, article, note or document include the transfer or transmission of the sketch, plan, model, article, note or document;

"document" includes part of a document;

"model" includes design, pattern, and specimen;

"munitions of war" includes the whole or any part of any ship, submarine, aircraft, tank or similar engine, arms and ammunition, torpedo, or mine, intended or adapted for use in war, and any other article, material, or device, whether actual or proposed, intended for such use;

"offence under this Act" includes any act, omission, or other thing which is punishable under this Act;

"office under the Government" includes any office or employment in or under any department of the Government;

"sketch" includes any photograph or other mode of representing any place or thing;

"superintendent of police" includes the person charged with the command, direction and superintendence of the police in any District.

Penalties for spying

3.—(1) If any person for any purpose prejudicial to the safety or interests of the State—

(*a*) approaches, inspects, passes over, or is in the neighbourhood of, or enters any prohibited place in Malawi within the meaning of this Act; or

(*b*) makes any sketch, plan, model, or note which is calculated to be or might be or is intended 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, word, or pass word, or any sketch, plan, model, article, or note, or other document or information which is calculated to be or might be or is intended to be directly or indirectly useful to an enemy, he shall be guilty of felony.

(2) On a prosecution under this section, it shall not be necessary to show that the accused person was guilty of any particular act tending to show a purpose prejudicial to the safety or interests of the State, and, notwithstanding that no such act is proved against him, he may be convicted if, from the circumstances of the case, or his conduct, or his known character as proved, it appears that his purpose was a purpose prejudicial to the safety or interests of the State; and if any sketch, plan, model, article, note, document, or information relating to or used in any prohibited place within the meaning of this Act, or anything in such a place, or any secret official code word or pass word is made, obtained, collected, recorded, published, or communicated by any 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 interests of the State unless the contrary is proved.

Wrongful communication, etc., of information

4.—(1) If any person having in his possession or control any secret official code word, or pass word, or any sketch, plan, model, article, note, document, or information which relates to or is used in a prohibited place or anything in such a 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 office under the Government, or as a person who holds or has held a contract made on behalf of the Government, or as a person who is or has been employed under a person who holds or has held such an office or contract—

(*a*) communicates the code word, pass word, 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 interest of the State his duty to communicate it; or

(*b*) uses the information in his possession for the benefit of any foreign power or in any other manner prejudicial to the safety or interests of the State; or

(*c*) retains the sketch, plan, model, article, note, or document in his possession or 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 all directions issued by lawful authority with regard to the return or disposal thereof; or

(*d*) fails to take reasonable care of, or so conducts himself as to endanger the safety of the sketch, plan, model, article, note, document, secret official code or pass word or information,

that person shall be guilty of a misdemeanour.

(2) If any person having in his possession or control any sketch, plan, model, article, note, document, or information which relates to munitions of war, communicates it directly or indirectly to any foreign power, or in any other manner prejudicial to the safety or interests of the State that person shall be guilty of a misdemeanour.

(3) If any person receives any secret official code word, or pass word, or sketch, plan, model, article, note, document or information, knowing, or having reasonable ground to believe, at the time when he receives it, that the code word, pass word, sketch, plan, model, article, note, document, or information is communicated to him in contravention of this Act, he shall be guilty of a misdemeanour, unless he proves that the communication to him of the code word, pass word, sketch, plan, article, note, model, document, or information was contrary to his desire.

Definition of prohibited place

5. For the purpose of this Act, the expression "prohibited place" means—

(*a*) any work of defence, arsenal, naval, military or air force establishment or station, factory, dockyard, mine, mine-field, camp, ship, or aircraft belonging to or occupied by or on behalf of the Government, or any telegraph, telephone, wireless or signal station, or office so belonging or occupied, and any place belonging to or occupied by or on behalf of the Government and used for the purpose of building, repairing, making, or storing any munitions of war, or any sketches, plans, models, or documents relating thereto, or for the purpose of getting any metals, oil, or minerals of use in time of war; and

(*b*) any place within Malawi not belonging to the Government where any munitions of war, or any sketches, models, plans or documents relating thereto are being made, repaired, gotten, or stored under contract with, or with any person on behalf of, the Government or otherwise on behalf of the Government; and

(*c*) any place belonging to or used for the purposes of the Government which is for the time being declared by order of the Minister to be a prohibited place for the purposes of this section on the ground that information with respect thereto, or damage thereto, would be useful to an enemy; and

(*d*) any railway, road, way, or channel, or other means of communication by land or water within Malawi (including any works or structures being part thereof or connected therewith), or any place within Malawi used for gas, water, or electricity works or other works for purposes of a public character, or any place within Malawi where any munitions of war, or any sketches, models, plans or documents relating thereto, are being made, repaired, or stored otherwise than on behalf of

the Government, which is for the time being declared by order of the Minister to be a prohibited place for the purposes of this section, on the ground that information with respect thereto, or the destruction or obstruction thereof, or interference therewith, would be useful to an enemy.

Unauthorized use of uniforms; falsification of reports, forgery, personation and false documents

6.—(1) If any person 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 State within the meaning of the said Act—

(*a*) uses or wears, without lawful authority, any naval, military, air-force, police, or other official uniform, or any uniform so nearly resembling the same 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; or

(*b*) orally, or in writing in any declaration or application, or in any document signed by him or on his behalf, knowingly makes or connives at the making of any false statement or any omission; or

(*c*) forges, alters or tampers with any passport or any naval, military, air-force, police or official pass, permit, certificate, licence, or other document of a similar character (hereinafter in this section referred to as an official document), or uses or has in his possession any such forged, altered, or irregular official document; or

(*d*) 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 or not to be a person to whom an official document or secret official code word or pass word has been duly issued or communicated, or with intent to obtain an official document, secret official code word or pass word, whether for himself or any other person, knowingly makes any false statement; or

(*e*) uses, or has in his possession or under his control, without the authority of the Government Department or the authority concerned, any die, seal, or stamp of or belonging to, or used, made or provided by any Government Department, or by any diplomatic, naval, military, or air-force authority appointed by or acting under the authority of the Government, or any die, seal or stamp so nearly resembling any such die, seal or stamp as to be calculated to deceive, or counterfeits any such die, seal or stamp, or uses, or has in his possession, or under his control, any such counterfeited die, seal or stamp,

he shall be guilty of a misdemeanour.

(2) If any person—

(*a*) retains for any purpose prejudicial to the safety or

interests of the State 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 directions issued by any Government Department or any person authorized by such department with regard to the return or disposal thereof; or

(*b*) allows any other person to have possession of any official document issued for his use alone, or communicates any secret official code word or pass word so issued, or, without lawful authority or excuse, has in his possession any official document or secret official code word or pass word issued for the use of some person other than himself, or on obtaining possession of any 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 constable; or

(*c*) without lawful authority or excuse, manufactures or sells, or has in his possession for sale any such die, seal or stamp as aforesaid,

he shall be guilty of a misdemeanour.

(3) In the case of any prosecution involving the proof of a purpose prejudicial to the safety or interests of the State, section 3 (2) shall apply in like manner as it applies to prosecutions under that section.

Evidence of espionage

7.—(1) In any proceedings against a person for an offence under section 3, the fact that he has been in communication with, or attempted to communicate with, a foreign agent, whether within or without Malawi, shall be evidence that he has for a purpose prejudicial to the safety or interests of the State, obtained or attempted to obtain information which is calculated to be or might be or is intended to be directly or indirectly useful to an enemy.

(2) For the purpose of this section, but without prejudice to the generality of the foregoing provision—

(*a*) a person shall, unless he proves to the contrary, be deemed to have been in communication with a foreign agent if—

(i) he has, either within or without Malawi, visited the address of a foreign agent or consorted or associated with a foreign agent; or

(ii) either within or without Malawi, the name or address of, or any other information regarding a foreign agent, has been found in his possession, or has been supplied by him to any other person, or has been obtained by him from any other person;

(*b* the expression "foreign agent" includes any person who is or has been or is reasonably suspected of being or having been employed by a foreign power either directly or indirectly for the purpose of committing an act either within or without Malawi, prejudicial to the safety or interests of the State, or who has or is reasonably suspected of having, either within or without Malawi, committed, or attempted to commit, such an act in the interests of a foreign power;

(*c*) any address, whether within or without Malawi, reasonably suspected of being an address used for the receipt of communications intended for a foreign agent, or any address 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 communications addressed to such address to be communications with a foreign agent.

Interfering with officers of the police or members of the armed forces of Malawi

8. No person in the vicinity of any prohibited place shall obstruct, knowingly mislead or otherwise interfere with or impede, the Commissioner of Police or police officer, or any member of the armed forces of Malawi engaged on guard, sentry, patrol, or other similar duty in relation to the prohibited place, and, if any person acts in contravention of, or fails to comply with, this provision, he shall be guilty of a misdemeanour.

Power to require the production of telegrams

9.—(1) Where it appears to the Minister that such a course is expedient in the public interest, he may, by warrant under his hand, require any person who owns or controls any telegraphic cable or wire, or any apparatus for wireless telegraphy, used for the sending or receipt of telegrams to or from any place out of Malawi, to produce to him, or to any person named in the warrant, the originals and transcripts, either 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 or received to or from any place out of Malawi by means of any such cable, wire, or apparatus, and all other papers relating to any such telegram as aforesaid.

(2) Any person who, on being required to produce any such original or transcript or paper as aforesaid, refuses or neglects to do so shall be guilty of an offence under this Act, and shall, for each offence, be liable to a fine of £50 and to imprisonment for three months.

(3) In this section, the expression "telegram" shall have the same meaning as in the Posts and Telegraphs Act. **Cap. 68:01**

Registration and regulation of persons carrying on the business of receiving postal packets

10.—(1) Every person who carries on, whether alone or in conjunction with any other business, the business of receiving for reward letters, telegrams, or other postal packets for delivery or forwarding to the persons for whom they are intended, shall as soon as may be send to the Commissioner of Police, for registration by him, notice of the fact together with the address or addresses where the business is carried on, and the Commissioner of Police shall keep a register of the names and addresses of such persons, and shall, if required by any person who sends such a notice, furnish him on payment of a fee of one shilling with a certificate of registration, and every person so registered shall from time to time furnish to the Commissioner of Police notice of any change of address or new address at which the business is carried on, and such other information as may be necessary for maintaining the correctness of the particulars entered in the register.

(2) Every person who carries on such a business as aforesaid shall cause to be entered in a book kept for the purpose the following particulars—

(*a*) the name and address of every person for whom any postal packet is received, or who has requested that postal packets received may be delivered or forwarded to him;

(*b*) any instructions that may have been received as to the delivery or forwarding of postal packets;

(*c*) in the case of every postal packet received, the place from which the postal packet comes, and the date of posting (as shown by the post-mark) and the date of receipt, and the name and address of the sender if shown on the outside of the packet, and, in the case of a registered packet, the date and office of registration and the number of the registered packet;

(*d*) in the case of every postal packet delivered, the date of delivery and the name and address of the person to whom it is delivered;

(*e*) in the case of every postal packet forwarded the name and address to which and the date on which it is forwarded,

and shall not deliver a letter to any person until that person has signed a receipt for the same in such book as aforesaid, nor, if that person is not the person to whom the postal packet is addressed, unless there is left with him instructions signed by the last-mentioned person as to the delivery thereof, and shall not forward any postal packet to another address unless there is left with him written instructions to that effect signed by the addressee.

(3) The books so kept and all postal packets received by a person carrying on any such business, and any instructions as to

the delivery or forwarding of postal packets received by any such person, shall be kept at all reasonable times open to inspection by any superintendent of police or other officer of police not below the rank of inspector.

(4) If any person contravenes or fails to comply with any of the provisions of this section, or furnishes any false information or makes any false entry, he shall be guilty of an offence under this Act, and shall, for each offence, be liable to a fine of £10 and to imprisonment for one month.

(5) Nothing in this section shall apply to postal packets addressed to any office where any newspaper or periodical is published, being postal packets in reply to advertisements appearing in such newspaper or periodical.

(6) Nothing in this section shall be construed as rendering legal anything which would be in contravention of the exclusive privilege of the Ministry of Transport and Communications under the Posts and Telegraphs Act. Cap. 68:01

Duty of giving information as to commission of offences

11. It shall be the duty of every person to give on demand to the Commissioner of Police, or to a superintendent of police, or to any member of the armed forces of Malawi engaged on guard, sentry, patrol, or other similar duty, any information in his power relating to an offence or suspected offence under this Act, and, if so required, and upon tender of his reasonable expenses to attend at such reasonable time and place as may be specified for the purpose of furnishing such information, and, if any person fails to give any such information or to attend as aforesaid, he shall be guilty of a misdemeanour.

Attempts, incitements, etc.

12. Any person who attempts to commit any offence under this Act, or solicits or incites or endeavours to persuade another person to commit an offence, or aids or abets or does any act preparatory to the commission of an offence under this Act, shall be guilty of a felony or a misdemeanour according as the offence in question is a felony or a misdemeanour and shall be liable to the same punishment, and to be proceeded against in the same manner, as if he had committed the offence.

Penalties for harbouring spies

13. If any person knowingly harbours any person whom he 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 knowingly permits to meet or assemble in any premises in his occupation or under his control any such persons, or if any person having harboured any such person, or permitted to meet or assemble in any premises in his occupation or under his control any such persons, wilfully omits or refuses to disclose to a superintendent of police any information which it is in his

power to give in relation to any such person he shall be guilty of a misdemeanour.

Power to arrest

14. Any person who is found committing an offence under this Act whether that offence is a felony or not, or who is reasonably suspected of having committed, or having attempted to commit, or being about to commit, such an offence, may be apprehended and detained in the same manner as a person who is found committing a felony.

Appointment of additional officers of police

15. The Minister may for the purpose of this Act confer on any person the powers and rank of an officer of police.

Power to convict person charged with felony under Act of misdemeanour under Act

16. Any person charged with an offence which is a felony under this Act may, if the circumstances warrant such a finding, be found guilty of an offence which is a misdemeanour under this Act.

Provisions as to trial and punishment of offences

17.—(1) Any person who is guilty of a felony under this Act shall be liable to imprisonment for a term of not less than three years and not exceeding fourteen years.

(2) Any person who is guilty of a misdemeanour under this Act shall be liable to a fine of £50 and to imprisonment for two years.

(3) For the purposes of the trial of a person for an offence under section 3, 4 or 13, the offence shall be deemed to have been committed either at a place in which the same actually was committed, or at any place in Malawi in which the offender may be found.

(4) In addition and without prejudice to any powers which a Court may possess to order the exclusion of the public from any proceedings if, in the course of proceedings before a Court against any person for an offence under this Act or the proceedings on appeal, or in the course of the trial of a person for felony or misdemeanour under this Act, application is made by the prosecution, on the ground that the publication of any evidence to be given or of any statement to be made in the course of the proceedings would be prejudicial to the national safety, that all or any portion of the public shall be excluded during any part of the hearing, the Court may make an order to that effect, but the passing of sentence shall in any case take place in public.

(5) Where the person guilty of an offence under this Act is a company or corporation, every director and officer of the company or corporation shall be guilty of the like offence unless he

proves that the act or omission constituting the offence took place without his knowledge or consent.

Restriction on prosecution

18. A prosecution for an offence under this Act shall not be instituted except by, or with the consent of, the Director of Public Prosecutions:

Provided that a person charged with such an 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 Director of Public Prosecutions to the institution of a prosecution of the offence has not been obtained, but no further or other proceedings shall be taken until that consent has been obtained.

Search warrants

19. If a magistrate is satisfied by information on 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 constable named therein to enter at any time any premises or place named in the warrant, if necessary, by force, and to search the 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 or anything which is evidence of an offence under this Act having been or being about to be committed, which he may find on the 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.

Trial of offences

20.—(1) An offence under this Act, may be inquired of, heard, and determined by the High Court.

(2) An offence under this Act shall not be tried by any subordinate court.