

**CRIMINAL OFFENCES (AMENDMENT) BILL, 2020**

ARRANGEMENT OF SECTIONS

*Section*

1. Section 239 of Act 29 amended
2. Section 248 of Act 29 amended
3. Section 249 of Act 29 amended
4. Section 250 of Act 29 amended
5. Section 251 of Act 29 amended
6. Section 252 of Act 29 amended
7. Section 253 of Act 29 amended
8. Section 254 of Act 29 amended
9. Section 256 of Act 29 amended
10. Section 260 of Act 29 amended

*Criminal Offences (Amendment) Bill, 2020*

A  
**BILL**

ENTITLED

**CRIMINAL OFFENCES (AMENDMENT) ACT, 2020**

**AN ACT** to amend the Criminal Offences Act, 1960 (Act 29) to categorise the offence of corruption as a felony, to provide a stiff penalty for a person who commits the offence of corruption and for related matters.

PASSED by Parliament and assented to by the President:

**Section 239 of Act 29 amended**

1. The Criminal Act, 1960 (Act 29), referred to in this Act as the “principal enactment” is amended by the substitution for section 239 of

**“Corruption of and by public officer or juror**

**239.** (1) A public officer or juror shall not commit corruption or willful oppression or extortion in respect of the duties of office.

(2) A person shall not corrupt any other person in respect of a duty as a public officer or juror.

*Criminal Offences (Amendment) Bill, 2020*

(3) A person who contravenes subsection (1) or (2) commits an offence and is liable on summary conviction to a term of imprisonment of not less than twelve years and not more than twenty-five years.”.

**Section 248 of Act 29 amended**

2. The principal enactment is amended by the substitution for section 248 of

**“False declaration for office or voting**

**248.** (1) A person shall not, in order to obtain or be qualified to act in a public office or to vote at a public election make, sign, publish or use a declaration, statement or an oath, required by law or a certificate or testimonial regarding conduct or services, or as to any other matter which is material for obtaining that office, for the qualification to act in that office or to vote at the election.

(2) A person who contravenes subsection (1), commits an offence and is liable on summary conviction to a fine of not less than five years and not more than ten years if that person knows that the declaration, statement, oath, certificate or testimonial is false.”.

**Section 249 of Act 29 amended**

3. The principal enactment is amended by the substitution for section 249 of

**“False certificate by public officer**

**249.** (1) A public officer who is authorised as a public officer to attest or certify, by writing or otherwise, a document or matter, or that an event has or has not happened, and shall not

(a) attest or certify the document or matter knowing it to be false; or

(b) attest that the event has happened or has not happened, without knowing or having reason to believe that it has happened or has not happened, according to the attestation or certificate.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a term of imprisonment of not less than five years and not more than ten years.”.

**Section 250 of Act 29 amended**

4. The principal enactment is amended by the substitution for section 250 of

**“Destruction of document by a public officer**

**250.** (1) A public officer shall not intentionally and unlawfully destroy, injure, falsify or conceal a document which is in the possession, custody, or control of the public officer or to which the public officer has access by virtue of office.

(2) A public officer who contravenes subsection (1) commits an offence and is liable on summary conviction to a term of imprisonment of not less than five years and not more than ten years.”.

**Section 251 of Act 29 amended**

5. The principal enactment is amended by the substitution for section 251 of

**“Deceiving a public officer**

**251.** (1) A person shall not, with intent to defeat, obstruct, or prevent the course of justice, or the due execution of the law, or evade the requirements of the law, or defraud or injure a person, or to obtain or assist in or facilitate the obtaining of any passport, instrument, concession, appointment, permission or any other privilege or advantage, endeavour to deceive or to overreach a public officer acting in the execution of a public office or duty by,

(a) personation, or by a false instrument, document, seal, signature, or

(b) a false statement, declaration or assurance whether written or verbal or by a written or verbal statement, declaration or assurance which the person making the statement, declaration or assurance did not have good reason to believe to be true.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a term of imprisonment of not less than five years and not more than ten years.”.

**Section 252 of Act 29 amended**

6. The principal enactment is amended by the substitution for section 252 of

**“Accepting or giving bribe to influence a public officer or juror**

**252.** (1) A person shall not accept, or agree or offer to accept, a valuable consideration, under pretence of having unduly influenced,

*Criminal Offences (Amendment) Bill, 2020*

or of agreeing or being able to influence, any other person in respect of functions as a public officer or juror.

(2) A person shall not give, or agree or offer to give, to a public officer a valuable consideration for the grant to that person or to any other person of a benefit or an advantage, or for the exercise of influence in favour of that person or any other person.

(3) A person who contravenes subsection (1) or (2) commits an offence and is liable on summary conviction to a term of imprisonment of not less than twelve years and not more than twenty-five years.”.

**Section 253 of Act 29 amended**

7. The principal enactment is amended by the substitution for section 253 of

**“Corrupt promise by judicial officer or juror**

**253.** (1) A person shall not, otherwise than in the due execution of a duty as a judicial officer or juror, make or offer to make an agreement with any other person as to the judgment or verdict which that person will or will not give as a judicial officer or juror in a pending or future proceeding.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a term of imprisonment of not less than twelve years and not more than twenty-five years.”.

**Section 254 of Act 29 amended**

8. The principal enactment is amended by the substitution for section 254 of

**“Corrupt selection of juror**

**254.** (1) A person shall not, with a purpose of procuring an undue advantage or disadvantage to a party to a judicial proceeding, procure for that person, or for any other person to be summoned, impaneled or sworn as a juror in the proceeding, or endeavour to prevent any other person from being summoned, impanelled or sworn as a juror in that proceeding.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a term of imprisonment of not less than five years and not more than ten years.”.

*Criminal Offences (Amendment) Bill, 2020*

**Section 256 of Act 29 amended**

9. The principal enactment is amended by the substitution for section 256 of

**“Corruption, intimidation, and personation in respect of election**

**256.** (1) A person shall not act in a manner that amounts to corruption, intimidation or personation in respect of a public election.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of not less than five years and not more than ten years.

(3) A person convicted under subsection (2) shall not hold a public office in respect of which the election was held, or a public office of the same nature.”.

**Section 260 of Act 29 amended**

10. The principal enactment is amended by the substitution for section 260 of

**“Withholding of public money by a public officer**

**260.** Where a public officer who is bound in that capacity to pay or account for money or a valuable thing, fails as in duty bound to pay or account for, or to produce or give up, to any other officer or person lawfully demanding the same, commits an offence and is liable on summary conviction to a term of imprisonment of not less than twelve years and not more than twenty-five years.”.

Date of *Gazette* notification: 26<sup>th</sup> June, 2020.

## CRIMINAL OFFENCES (AMENDMENT) BILL, 2020

### MEMORANDUM

The object of this Bill is to amend the Criminal Offences Act, 1960 (Act 29) to categorise the offence of corruption as a felony and provide a stiff penalty for a person who commits the offence of corruption.

Corruption undoubtedly, holds back the economic growth of a country as it reduces revenue to the State and distorts economic development by rewarding the dishonest rather than the most competent.

Corruption does not only impede economic development but also stifles infrastructural and social development, increases the cost of doing business in the country and makes the country unattractive for the purposes of foreign direct investment. Furthermore, corruption undermines state legitimacy and respect for legally constituted authority, democratic institutions, ethical values, the rule of law and the credibility of governments.

The Criminal Offences Act, 1960 (Act 29), enacted during the First Republic makes provision for the offence of corruption. The 1992 Constitution, also takes cognisance of the duty of the State to ensure that the national economy is managed in a manner that maximizes the rate of economic development. *Clause (d)* of article 35 of the 1992 Constitution obliges the State to take steps to eradicate corrupt practices and the abuse of power.

The negative impact of corruption on the international community and the country, necessitated the joint effort of the international community to take measures to eradicate corruption.

In recent times, Ghana has experienced a spate of corruption scandals associated with persons holding public office. These corruption scandals have had dire consequences on the economic development and international image of the country. In response to this, Government has proposed that as part of its legislative reforms to tackle corruption, the offence of corruption under Act 29, be categorised as a felony and a stiff correlative penalty be provided. This would serve as a deterrent for persons who engage in corrupt activities in the country.

## CRIMINAL OFFENCES (AMENDMENT) BILL, 2020

The amendment to the Criminal Offences Act, 1960 (Act 29) is supported in principle by Ghana's international obligations under the United Nations Convention Against Corruption, which was ratified by the Republic on 14<sup>th</sup> of December, 2005. The Preamble to the United Nations Convention Against Corruption indicates that the Convention was developed pursuant to the concerns of State Parties regarding the seriousness and threats posed by corruption, to the stability and security of nations including jeopardizing sustainable development and the rule of law. Paragraphs 1 and 2 of the Preamble provide as follows:

*“The State Parties to this Convention,*

*Concerned about the seriousness of problems and threats posed by corruption to the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law,*

*Concerned further about cases of corruption that involve vast quantities of assets, which may constitute a substantial proportion of the resources of States, and that threaten the political stability and sustainable development of those States,..”*

*Have agreed to this Convention as follows:”*

Clause 1 of Article 30 of the United Nations Convention against Corruption requires State Parties to prescribe sanctions for the offence of corruption taking into consideration the gravity of the offence. Clause 1 of Article 30 of the United Nations Convention Against Convention states as follows:

***‘Article 30. Prosecution, adjudication and sanctions***

*1. Each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence.”*

As a further step towards enhancing the rule of law and protecting the resources of the State, Ghana ratified the African Union Convention on Preventing and Combatting Corruption, on 14<sup>th</sup> December, 2005. The



## CRIMINAL OFFENCES (AMENDMENT) BILL, 2020

African Union Convention on Preventing and Combatting Corruption, provides in its Preamble for the underpinning principles which has resulted in the conclusion of the Convention as follows:

*“ The Member States of the African Union:*

*Concerned about the negative effects of corruption and impunity on the political, economic, social and cultural stability of African States and its devastating effects on the economic and social development of the African peoples;*

*Acknowledging that corruption undermines accountability and transparency in the management of public affairs as well as socio-economic development on the continent;*

*Recognising the need to address the root causes of corruption on the continent;*

*Convinced of the need to formulate and pursue, as a matter of priority, a common penal policy aimed at protecting the society against corruption, including the adoption of appropriate legislative and adequate preventive measures;*

*Have agreed as follows;”*

Clause (5) of Article 3 of the African Union Convention on Preventing and Combatting Corruption provides that State Parties to the Convention undertake to abide by the principle of

*“5. Condemnation and rejection of acts of corruption, related offences and impunity.”*

The policy initiative of Government is to categorise the offence of corruption as a felony and provide a stiff correlative penalty for the offence of corruption under the Criminal Offences Act, 1960 (Act 29). Currently, the offence of corruption under Act 29 is a misdemeanour.

Chapter Five of Part Four of the Criminal Offences Act, 1960 (Act 29) expressly provides for the corruption offences, relating to public officers and to public elections under sections 239, 248, 249, 250, 251, 252, 253, 254, 256 and 260 as misdemeanours.

## CRIMINAL OFFENCES (AMENDMENT) BILL, 2020

Section 296 of Act 30 provides generally, for the rules of punishment for offences described as a first degree felony, second degree felony and a misdemeanour. A distinct category of offences under subsection (5) which attracts a term of imprisonment not exceeding twenty-five years includes offences under sections 239, 252, 253 and 260 of Act 29 which are categorised as misdemeanours.

Other corruption offences captured under sections 248, 249, 250, 251, 254 and 256 of Act 29 relate to corruption by public officials and public office, and are also categorised as misdemeanours.

The Bill seeks to reiterate the existing offences under various provisions of Act 29 but substitutes the relevant provisions by providing specifically for stiffer penalties to bring them within the category of a first-degree or second-degree felony. The amending provisions also stipulate the minimum and maximum thresholds. The thresholds serve as a yardstick to guide judges in the determination of the term of imprisonment to impose.

The Bill also takes cognisance of the penalty range under subsection (5) of section 296 of Act 30 and provides penalties for some of the offences in sync with this provision. This is reflected by *clauses 1, 6, 7 and 10* of the Bill which amend sections 239, 252, 253 and 260 of Act 29 accordingly.

*Clause 1* of the Bill amends section 239 of the Act to provide expressly for a penalty for the existing offence of corruption or willful oppression or extortion in respect of the duties of office of a public officer or juror. The penalty prescribed for the contravention of this offence is a term of imprisonment of not less than twelve years and not more than twenty-five years. In effect the offence cannot be considered a misdemeanour.

*Clause 2* of the Bill amends section 248 of the Act to provide for a specified penalty for the offence of making a false declaration for office or voting. The *clause* prescribes the correlative penalty of a term of imprisonment of not less than five years and not more than ten years, which in effect displaces it from the category of a misdemeanour.

## CRIMINAL OFFENCES (AMENDMENT) BILL, 2020

*Clause 3* amends section 249 of Act 29. It makes the offence of the falsification of a certificate by a public officer punishable with a penalty of a term of imprisonment of not less than five years and not more than ten years. The effect of the amendment, is to categorise the existing offence which is a misdemeanour, as a second-degree felony.

*Clause 4* amends section 250 of the Act and categorises the offence of the destruction of a document by a public officer as a second-degree felony by prescribing the commensurate penalty for this.

*Clause 5* amends section 251 of the Act. The *clause* provides a penalty for the offence of deceiving a public officer, akin to the penalty for a second-degree felony. The penalty for the offence is a term of imprisonment of not less than five years and not more than ten years.

*Clause 6* amends section 252 of the Act. The *clause* provides a penalty for the contravention of the offence of accepting or giving bribe to influence a public officer or juror. *Subclause (5)* prescribes the penalty of a term of imprisonment of not less than twelve years or more than twenty-five years. The penalty provided is in sync with subsection (5) of section 296 of Act 30.

*Clause 7* amends section 253 of Act 29. For the offence of a corrupt promise by a judicial officer or juror a similar penalty as provided under *clause 6* is prescribed to correlate to the penalty prescribed under subsection (5) of section 296 of Act 30.

*Clause 8* amends section 254 of Act 29. The *clause* prescribes a penalty correlative with a second degree felony for the offence of the corrupt selection of a juror.

*Clause 9* amends section 256 of the Act to provide a penalty for the corruption, intimidation and personation in respect of a public election. The penalty prescribed is a term of imprisonment of not less than five years and not more than ten years. It must be noted that section 256 has also been amended to take into account the Supreme Court decision on the constitutionality of the right to vote, in the case of *Abu Ramadan and Nimako (No 2) v Electoral Commission and Attorney-General* [2015-2016] 1

**CRIMINAL OFFENCES (AMENDMENT) BILL, 2020**

SCGLR 1. Section 256 of Act 29 currently deprives a person from voting at a public election in respect of which an election is held should that person commit the offence of corruption, intimidation and personation in respect of a public election. It is expedient to reflect this position of the law by way of amendment.

*Clause 10* of the Bill provides a penalty for the offence of withholding of public money by a public officer. The penalty correlates with that prescribed under subsection (5) of section 296 of Act 30.

**GLORIA AFUA AKUFFO (MISS)**  
*Attorney-General and Minister for Justice*

Date: 23<sup>rd</sup> June, 2020.