

ACT 526

SECURITY AND INTELLIGENCE AGENCIES ACT, 1996

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ACT 526

SECURITY AND INTELLIGENCE AGENCIES ACT, 1996¹

AN ACT to make provision in respect of the National Security Council, to provide for the establishment of regional and district security councils, to specify the state agencies responsible for implementing government policies on the security of the Republic and issues relating to internal and external security and to provide for related matters.

*National Security Council***1. The National Security Council**

The National Security Council as established by article 83 of the Constitution consists of

- (a) the President,
- (b) the Vice-President,
- (c) the Ministers holding the portfolios of foreign affairs, defence, interior and finance and any other Ministers as determined by the President,
- (d) the Chief of Defence staff and two other members of the Armed Forces,

1. The Act was assented to on 30th December, 1996 and notified in the *Gazette* on 31st December, 1996.

- (e) the Inspector-General of Police, the Commissioner of Police responsible for the Criminal Investigation Department and one other member of the Police Service,
- (f) the Director-General of the Prisons Service,
- (g) the Director of External Intelligence,
- (h) the Director of Internal Intelligence,
- (i) the Director of Military Intelligence,
- (j) the Commissioner of Customs, Excise and Preventive Service, and
- (k) three persons appointed by the President.

2. Procedure at meetings of the Council

(1) The President shall preside at the meetings of the Council and in the absence of the President the Vice-President shall preside.

(2) The President may, acting in consultation with the Council, invite any other persons as the President considers necessary for the deliberations of the Council.

(3) The person invited to participate in the deliberations of the Council under subsection (2) shall not vote on a matter for decision before the Council.

(4) The Council shall regulate the procedure at its meetings.

3. Secretary to the Council

The Secretary to the Cabinet is the secretary to the Council.

4. Functions of the Council

The functions of the Council in accordance with article 84 of the Constitution include

- (a) considering and taking appropriate measures to safeguard internal and external security;
- (b) ensuring the collection of information relating to security and the integration of the domestic, foreign and security policies relating to it so as to enable the security services and any other departments and agencies of the Government to co-operate more effectively in matters relating to national security;
- (c) assessing and appraising the objectives, commitments and risks in relation to the actual and potential military power in the interest of national security; and
- (d) taking appropriate measures regarding the consideration of policies on matters of common interest to the departments and agencies of the Government concerned with national security.

Regional and District Security Councils

5. Establishment of regional and district security councils

(1) There shall be a security council for each Region and district.

(2) The regional and district security councils shall operate as committees of the Council and shall perform in the regions and districts the functions determined by the Council.

(3) A regional security council is answerable to the Council in the performance of its functions.

(4) A district security council is answerable to the relevant regional security council in the performance of its functions.

6. Membership of regional security council

(1) A regional security council shall consist of

- (a) the Regional Minister, as the chairman,
- (b) the Deputy Regional Minister or Ministers,
- (c) the chief executive of the Metropolitan, Municipal or District Assembly in the regional capital,
- (d) an officer of the Armed Forces nominated by the Chief of Defence Staff,
- (e) the Regional Police Commander,
- (f) the Regional Crime Officer,
- (g) the regional officer of the internal intelligence agency specified in section 10,
- (h) the Customs, Excise and Preventive Service officer in charge of the Region,
- (i) the Prisons Service officer in charge of the Region,
- (j) the immigration officer in charge of the Region,
- (k) the Fire Service officer in charge of the Region, and
- (l) two other persons nominated by the Regional Minister in consultation with the national security co-ordinator appointed under section 18.

(2) A regional security council shall regulate the procedure at its meetings.

7. Functions of regional security council

A regional security council shall in relation to the Region

- (a) perform the functions of the Council assigned to it by the Council, and
- (b) provide early warning to the Government of the existence or likelihood of a security threat to the Region, to the country or to the Government.

8. Membership and procedure of district security council

(1) A district security council shall consist of

- (a) the District Chief Executive, as the chairman,
- (b) the District Police Commander,
- (c) the District Crime Officer,

- (d) the district representative of the internal intelligence agency,
- (e) the Customs, Excise and Preventive Service officer in charge of the district,
- (f) the immigration officer in charge of the district,
- (g) the Fire Service officer in charge of the district, and
- (h) two other persons nominated by the District Chief Executive in consultation with the co-ordinator.

(2) A district security council shall regulate the procedure at its meetings.

9. Functions of a district security council

A district security council shall in relation to the district

- (a) perform the functions of the Council assigned to it by the Council, and
- (b) provide early warning to the Government of the existence or likelihood of a security threat to the district, to the country or to the Government.

The Internal and External Intelligence Agencies

10. National security intelligence agencies

The departments existing immediately before the coming into force of this Act and known as the Bureau of National Investigation and the Research Department respectively are hereby continued in existence under this Act as the internal and external intelligence agencies of the Republic.

11. Governing body of the intelligence agencies

The governing body of the intelligence agencies is the National Security Council.

12. Functions of the intelligence agencies

The intelligence agencies shall

- (a) collect, analyse, retain and disseminate as appropriate information and intelligence regarding activities that may constitute threats to the security of the Republic or the Government;
- (b) safeguard the economic wellbeing of the Republic against threats posed by the acts or omissions of persons or organisations both inside and outside the country;
- (c) protect the Republic against threats of espionage, sabotage, terrorism, hijacking, piracy, drug trafficking and similar offences;
- (d) protect the Republic against the activities of persons, both national and non-nationals, intended to overthrow the Government or undermine the constitutional order through illegal political, military, industrial or any other means or through any other unconstitutional method; and
- (e) perform any other functions directed by the President or the Council.

13. Appointment of directors

(1) A director shall be appointed for each of the intelligence agencies provided under this Act who shall be the head of the relevant agency.

(2) The directors shall be appointed by the President in accordance with article 195 of the Constitution and on the terms and conditions determined by the President.

14. Functions of the directors

A director appointed under section 13

- (a) is responsible for the efficient and effective performance of the functions of the intelligence agency of which the director is the head;
- (b) shall control and administer the intelligence agency under the director subject to the directions given by the President or the Council;
- (c) shall pursue and ensure political party neutrality of the intelligence agency in the performance of its functions.

15. Other employees of the intelligence agencies

(1) The President shall appoint, in accordance with article 195 of the Constitution, any other staff and employees required for the effective performance of the functions of the intelligence agencies.

(2) The President may in accordance with article 195 (2) of the Constitution delegate the power of appointment under this section.

(3) Other public officers may be seconded or transferred to any of the intelligence agencies.

16. Committees

The Council may, for the performance of the functions provided in this Act appoint committees consisting of members of the Council or non-members or both, and assign to the committee any of its functions, except that a committee composed entirely of non-members may only advise the Council.

17. Ministerial responsibility for the intelligence agencies

(1) The President shall assign ministerial responsibility for the intelligence agencies to the Minister whom the President considers appropriate.

(2) The Minister assigned responsibility under subsection (1) shall, in respect of each year, submit a report to Parliament on the intelligence agencies.

National Security Co-ordinator

18. Appointment of national security co-ordinator

(1) The President shall appoint, in accordance with article 195 of the Constitution, an officer to be designated as the national security co-ordinator.

(2) The terms and conditions of service of the co-ordinator shall be stated in the letter of appointment.

19. Functions of the co-ordinator

The functions of the national security co-ordinator are,

- (a) to co-ordinate on a day-to-day basis the activities of the national, regional and district security councils and the activities of the intelligence agencies;
- (b) to collate and evaluate intelligence reports relating to national security and ensure dissemination of the information within the Government as appropriate;
- (c) to determine in consultation with the directors of the intelligence agencies the manpower level requirements of the intelligence agencies;
- (d) to assist the relevant intelligence agency to gather defence intelligence both internal and external and use the information to detect and prevent threats to the security of the Republic; and
- (e) to perform any other functions relating to the functions specified in this section directed by the President or the Council.

20. Staff for office of the co-ordinator

(1) The President shall appoint, in accordance with article 195 of the Constitution to assist the co-ordinator in the performance of functions, the employees that the President considers necessary.

(2) The President may in accordance with article 195 (2) of the Constitution delegate the power of appointment of public officers under this section.

(3) Other public officers may be transferred or seconded to the Office of the Co-ordinator.

Complaints Tribunal and Warrants

21. Investigation of complaints

(1) A person who is aggrieved by an omission of an intelligence agency may submit a written or oral complaint to the director of that intelligence agency.

(2) The director shall examine the complaint and take appropriate action within a period not exceeding thirty days from the date of receipt of the complaint.

(3) A person who has made a complaint to a director under this section may, where

- (a) action is not taken on the complaint within the period specified, or
- (b) that person is dissatisfied with the action taken by the director,

submit a written complaint to the Chief Justice who shall refer the complaint to the tribunal provided for under section 22.

22. Complaints tribunal

(1) The Chief Justice shall on receipt of a complaint, appoint within a period of sixty days, a tribunal of three persons to examine and determine the issues in the complaint.

(2) The tribunal shall consist of

- (a) a Justice of the High Court, a retired Justice of the High Court or a lawyer who qualifies to be appointed a Justice of the High Court, and
- (b) two other persons one of whom is a person with considerable knowledge of the area of the subject matter of the complaint and operation of intelligence activities in general.

23. Examination of complaints

(1) The tribunal shall examine and determine a complaint referred to it by the Chief Justice.

(2) The tribunal shall not determine a complaint which

- (a) it considers frivolous or vexatious or is not made in good faith, or
- (b) is the subject matter of an action before a Court, or
- (c) it considers to be prejudicial to national security.

24. Proceedings at investigation

(1) The tribunal may exclude from its proceedings persons, other than parties to the proceedings and their lawyers, where it considers it necessary in the interest of defence, public safety, public order, public morality or the protection of the private lives of persons concerned in the proceedings.

(2) The tribunal may call a witness who, and request the production of documents, which it considers necessary in the interest of justice.

(3) A witness appearing before the tribunal shall be paid travelling and any other allowances determined by the Chief Justice.

(4) The tribunal shall give a fair hearing to the persons appearing before it, and for that purpose, the rules of procedure of the High Court shall apply to proceedings of the tribunal with the modifications that are necessary.

25. Notification to the director

The tribunal shall not commence the examination of a complaint referred to it by the Chief Justice unless it has submitted to the director of the intelligence agency concerned a written notice together with the substance of the complaint.

26. Representation before tribunal

A person appearing before the tribunal may

- (a) make a representation to the tribunal,
- (b) be represented by a lawyer chosen by that person, and
- (c) produce the evidence that person considers necessary for the investigations.

27. Decision of the tribunal

(1) On the conclusion of an investigation of a complaint the tribunal shall notify the director concerned and the complainant of its decision.

(2) Where the tribunal decides that compensation in the form of money should be paid to the complainant, the tribunal shall direct that the money is paid from public funds.

28. Appeal to the Court of Appeal

An appeal against a decision of the tribunal lies as of right to the Court of Appeal.

29. Application for warrant

(1) Where a director of an intelligence agency or an employee designated by the director, has reasonable grounds to believe that a warrant is required to enable the agency to perform a function under this Act, the director or the designated employee may apply for the issue of a warrant.

(2) The application for the warrant shall be made in writing to a Justice, the chairman of a tribunal or a senior police officer with the rank of superintendent or above.

30. Matters to be specified in an application for warrant

(1) An application for a warrant shall specify

- (a) the facts relied on to justify the belief, or reasonable grounds, that a warrant is required to enable the intelligence agency to investigate a threat to security or to perform its functions under this Act;
- (b) that the urgency of the matter is of a nature that it would be impracticable to carry out the investigation using other investigative procedures or that without a warrant under this section it is likely that information of importance relating to a threat to security or the performance of the functions under this Act would not be obtained;
- (c) where the purpose is to intercept communication,
 - (i) the type of communication proposed to be intercepted, the type of information, records, documents or things proposed to be obtained and the powers in paragraphs (a) and (b) proposed to be used; and
 - (ii) the identity of the person, if known, whose communication is proposed to be intercepted or who has possession of the information, record, document or thing proposed to be obtained;
- (d) the person or class of persons to whom the warrant is proposed to be directed;
- (e) a general description of the place where the warrant is proposed to be executed, if a general description of that place can be given;
- (f) the period, not exceeding sixty days, for which the warrant requested is to be in force where necessary;

- (g) a previous application made in relation to a person identified pursuant to paragraph (c) (ii), the date on which the application was made, the name of the Justice to whom the application was made and the decision of the Justice in respect of the application.

(2) A warrant authorising the interception of communications shall be signed personally by a Justice of the Superior Court of Judicature.

31. Effect of warrant

(1) A warrant issued under section 29 shall authorise a person in a class of persons to whom the warrant is issued, to exercise the powers specified in the warrant for the purpose of intercepting communications, obtaining information, records, documents or things of the type specified in the warrant.

(2) The warrant shall further authorise the provision of assistance to the person exercising the powers specified in the warrant by a person who believes that, on reasonable grounds, that person is exercising the powers in accordance with a warrant.

Financial and Miscellaneous Provisions

32. Expenses of Council and the intelligence agencies

Parliament shall provide from the Consolidated Fund the moneys required for the expenses of the Council and the intelligence agencies.

33. Accounts and audit

(1) The co-ordinator of the Council shall keep books of account and proper records in relation to them in the form approved by the Auditor-General.

(2) The books of account shall be audited by the Auditor-General each financial year.

34. Retirement benefits

Officers and employees in the intelligence agencies are entitled, with respect to their employment in the intelligence agencies, to the retirement benefits that are applicable to the Police Service.

35. Oaths

(1) A director and any other employee of an intelligence agency shall, before the commencement of functions under this Act, take the oath of allegiance and the oath of secrecy provided in the Schedule.

(2) A director and any other employee shall on ceasing to be an employee, be sworn out of office in accordance with the oath provided in the Schedule.

36. Authorised disclosure of information

(1) An employee of an intelligence agency shall not disclose an information obtained in the performance of a function under this Act except as required by virtue of this Act or any other enactment.

(2) Despite subsection (1), an intelligence agency may permit the disclosure of information by an employee under this Act,

- (a) to a public officer who has authority to investigate an alleged contravention of a law or to the Attorney-General, if the information is required for an investigation or prosecution;
- (b) to the Minister responsible for Foreign Affairs, if the information relates to the conduct of the international affairs of the country;
- (c) to the Minister responsible for Defence or a person designated by the Minister, if the information is relevant to the defence of the country;
- (d) to the Chief Justice, if the information is required by a Court of competent jurisdiction;
- (e) to a Minister of State or person in the public service, if in the opinion of the director the disclosure of the information is essential in the public interest, and the public interest outweighs an invasion of privacy that may result from the disclosure.

37. Offences to disclose information and identity

(1) Subject to the Constitution and to section 36, a person shall not disclose an information obtained by that person or to which that person had access in the performance of functions under this Act or to which that person had access in the administration or enforcement of this Act and from which there can be inferred the identity of

- (a) any other person who is or was a confidential source of information or assistance to the intelligence agency, or
- (b) a person who is or was an employee engaged in covert operational activities of the intelligence agencies.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a term of imprisonment not exceeding ten years.

38. Disclosure before Parliament

(1) An employee of an intelligence agency shall not be required to produce before Parliament a document or any other evidence where

- (a) the Speaker certifies
 - (i) that the document or the other evidence belongs to a class of documents or evidence, the production of which is injurious to the public interest, or
 - (ii) that the disclosure of the evidence or of the contents of the document will be injurious to the public interest; or
- (b) the Council certifies
 - (i) that the document or any other evidence belongs to a class of documents or evidence the production of which is prejudicial to the security of the Republic, or
 - (ii) that disclosure of the evidence or of the contents of the document will be prejudicial to the security of the Republic.

(2) Where there is doubt as to the nature of a document or any other evidence referred to in subsection (1), the Speaker or the Council shall refer the matter, in accordance with article 135 of the Constitution, to the Supreme Court for determination whether the production, or the disclosure of the contents, or the document or any other evidence would be injurious to the public interest or prejudicial to the security of the Republic.

39. Application of Evidence Act, 1975

The provisions on disclosure of information in this Act are without prejudice to the privileges conferred on a person under the Evidence Act, 1975² in relation to disclosure of evidence.

40. Protection of employees

Subject to the Constitution, an employee of an internal intelligence agency has in the performance of functions under this Act, the same rights and powers as are conferred by law on a police officer in the performance of functions and has the same protections.

41. Regulations

(1) The Council may, by legislative instrument, make Regulations for the effective implementation of this Act.

(2) Without limiting the effect of subsection (1), the Regulations may provide for matters on discipline of the employees.

(3) An instrument issued under this section signed personally by the President or the Minister assigned responsibility for the intelligence agencies.

42. Interpretation

In this Act, unless the context otherwise requires,

“**co-ordinator**” means the national security co-ordinator appointed under section 18;

“**Council**” means the National Security Council established by article 83 of the Constitution, and referred to in section 1;

“**director**” means the director of an intelligence agency;

“**district security council**” means a district security council established under section 5;

“**employee**” means a person who is appointed as an employee of the intelligence agencies or has become an employee of an agency under this Act whether by transfer, secondment or otherwise;

“**functions**” include powers and duties;

“**intelligence agencies**” means the internal or external intelligence agencies referred to in section 10;

2. N.R.C.D. 323.

“Justice” means a Justice of the Superior Court of Judicature;

“regional security council” means a regional security Council established under section 5;

“security services” means the services connected with national security as determined by the Council;

“threats to security” includes

- (a) espionage or sabotage that is against the Republic or is detrimental to the interest of the Republic, or activities directed towards or in support of that espionage or sabotage;
- (b) foreign influenced activities within or relating to the Republic that are detrimental to the interest of the Republic and are clandestine or deceptive or involve a threat to a person; or
- (c) activities within or relating to the Republic directed towards or in support of the threat or use of acts of serious violence against persons or property for the purpose of achieving a political objective within the Republic or a foreign state.

43. Savings

A person employed for the Bureau of National Investigations or the Research Department immediately before the coming into force of this Act becomes, on the coming into force of this Act, an employee of the respective intelligence agency.

SCHEDULE

[Section 35]

Forms of Oath

OATH OF OFFICE

I, do (in the name of the Almighty God swear) (solemnly affirm) that I will faithfully and impartially to the best of my abilities perform the functions required of me as (the director/an employee) of the intelligence agencies. So help me God.

OATH OF SECRECY ON TAKING OFFICE

I, do (in the name of the Almighty God swear) (solemnly affirm) that I will not, without due authority, disclose or make known to a person an information acquired by me by reason of the functions performed by me on behalf of or under the direction of the intelligence agencies or by reason of an office or employment held by me pursuant to the Security and Intelligence Agencies Act, 1996. So help me God.

OATH OF ALLEGIANCE

I, do (in the name of the Almighty God swear) (solemnly affirm) that I will bear true faith and allegiance to the Republic of Ghana; to the President of Ghana, to the Government of Ghana, as by law established; that I will uphold the sovereignty and integrity of the Republic of Ghana; and that I will preserve, protect and defend the Constitution of the Republic of Ghana. So help me God.

OATH OF SECRECY ON LEAVING OFFICE

I, having resigned from my appointment in or having had my appointment terminated by, the Internal and External Intelligence Agency, do hereby (in the name of God swear) (solemnly affirm) that I will not directly or indirectly communicate or reveal a matter to a person which was considered by me or came to my knowledge in the discharge of my former official duties save as may be required for or as may be specifically permitted by law. So help me God.
