

## CHAPTER 11:09

### OFFICIAL SECRETS ACT

*Acts 16/1970, 27/1975 (s. 8); 22/2001 (s. 4), 5/2002 (s. 92); R.G.N. 1308/1973.*

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**AN ACT to prohibit the disclosure for any purpose prejudicial to the safety or interests of Zimbabwe of information which might be useful to an enemy; to make provision for the purpose of preventing persons from obtaining or disclosing official secrets in Zimbabwe; to prevent unauthorized persons from making sketches, plans or models of and to prevent trespass upon defence works, fortifications, military reserves and other prohibited places; and to provide for matters incidental to the foregoing.**

[Date of commencement: 27th February, 1970.]

#### **1 Short title**

This Act may be cited as the Official Secrets Act [*Chapter 11:09*].

#### **2 Interpretation**

(1) In this Act—

“document” includes—

- (a) any book, pamphlet, record, list, placard or poster; or
- (b) any drawing, sketch, picture, plan or photographic or other representation of a place or thing; or
- (c) any sound recording or other contrivance for the reproduction of sound;

“enemy” includes a hostile organization;

“foreign agent” includes any person who—

- (a) is or has been or is reasonably suspected of being or having been, directly or indirectly, employed by the government of a country or a hostile organization for the purpose of committing in Zimbabwe or elsewhere an act prejudicial to the safety or interests of Zimbabwe; or
- (b) has or is reasonably suspected of having committed or attempted to commit in Zimbabwe or elsewhere, in the interests of a country other than Zimbabwe or of a hostile organization, an act prejudicial to the safety or interests of Zimbabwe;

“hostile organization” means—

- (a) any organization which is an unlawful organization in terms of the Unlawful Organizations Act [*Chapter 11:13*]; or
- (b) any other organization operating outside Zimbabwe which is declared by the President, by notice in a statutory instrument, to be a hostile organization on the grounds that it is furthering or encouraging persons to commit acts prejudicial to the safety or interests of Zimbabwe;

“model” includes a 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 Zimbabwe or capable of being adapted for such use;

“prohibited place” means—

- (a) any defence work belonging to, occupied by or used by or on behalf of the State, including—
  - (i) any arsenal, military or air force establishment or station, factory, harbour, camp, ship, vessel or aircraft;
  - (ii) any police camp or depot at the time being used for the purposes of defence;
  - (iii) any place used for building, repairing, making or keeping munitions of war or any model or document relating thereto;
- (b) any place where munitions of war or any model or document relating thereto is being built, repaired, made, kept or obtained under contract with or on behalf of the State or of the government of any country other than Zimbabwe;
- (c) any place declared by the President in terms of section *thirteen* to be a prohibited place for the purposes of this Act.

(2) References in this Act to—

- (a) communicating or receiving any thing, shall be construed as including a reference to communicating or receiving any part or the substance, effect or description thereof;
- (b) obtaining or retaining any thing, shall be construed as including a reference to obtaining or retaining any part or copying or causing to be copied the whole or any part thereof, whether by photographic means or otherwise;
- (c) communicating any thing, shall be construed as including a reference to the transmission or transfer thereof.

### 3 Espionage

Any person who, for any purpose prejudicial to the safety or interests of Zimbabwe— (a) approaches, inspects, passes over or is in the vicinity of or enters any prohibited place; or

- (b) makes any model or document which is calculated to be or which might or is intended to be useful, directly or indirectly, to an enemy; or
- (c) obtains, collects, records, publishes or communicates to any person—
  - (i) any secret official code or password; or
  - (ii) any model, article, document or other information which is calculated to be or which might or is intended to be useful, directly or indirectly, to an enemy;

shall be guilty of an offence and liable to imprisonment for a period not exceeding twenty-five years.

### 4 Prohibition of communication of certain information

(1) Any person who has in his possession or under his control any secret official code or password or any model, article, document or information which—

- (a) relates to or is used in a prohibited place or relates to any thing in a prohibited place; or
- (b) has been made or obtained in contravention of this Act; or
- (c) has been entrusted in confidence to him by a person holding an office in the service of the State; or
- (d) he has obtained or to which he has had access owing to his position as a person who holds or has held office in the service of the State or as a person who holds or has held a contract made on behalf of the State 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 an office or contract;

and who—

- (i) communicates such code, password, model, article, 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 Zimbabwe his duty to communicate it; or
- (ii) uses such information in any manner or for any purpose prejudicial to the safety or interests of Zimbabwe; or
- (iii) retains such model, article 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
- (iv) fails to take proper care of or so conducts himself as to endanger the safety of such model, article, document, code, password or information;

shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding twenty years or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

(1a) For the avoidance of doubt it is declared that subsection (1) shall not apply to the disclosure in accordance with the Access to Information and Protection of Privacy Act [*Chapter 10:27*] of any document or information by a person who, being the head of a public body as defined in that Act, has lawful access to the document or information.

[Subsection inserted by section 92 of Act 5 of 2002]

(2) Any person who—

(a) has in his possession or under his control any model, article, document or information which relates to—

- (i) munitions of war or any military matter; or
- (ii) the preservation of the security of Zimbabwe or the maintenance of law and order by the Police Force or any other body or organization appointed or established by the Government for the purpose of assisting in the preservation of the security of Zimbabwe; and

(b) publishes or communicates such model, article, document or information to any person in any manner or for any purpose prejudicial to the safety or interests of Zimbabwe; shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding twenty years or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

(3) Any person who receives any secret official code or password or any model, article, document or information, knowing or having reasonable grounds to believe, at the time when he receives it, that the code, password, model, article, document or information is communicated to him in contravention of this Act, shall, unless he proves that the communication thereof to him was against his wish, be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding twenty years or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

## **5 Certain acts prejudicial to safety or interests of Zimbabwe 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 Zimbabwe—

- (a) without lawful authority, uses or wears any military, air force, police or other official uniform of Zimbabwe or any uniform so closely 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 any false statement or omits any relevant fact; or
- (c) forges, alters or tampers with any passport or any official pass, permit, certificate, licence or other document, hereinafter in this section referred to as an official document, or uses or has in his possession any forged, altered or irregular official document; or
- (d) impersonates or falsely represents himself to be a person holding, or in the employment of a person holding, office in the service of the State 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 Zimbabwe 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 to a fine not exceeding level twelve or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

(2) Any person who—

- (a) retains for any purpose prejudicial to the safety or interests of Zimbabwe 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 lawful authority 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
- (c) communicates to any person any secret official code or password issued for his use alone 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
- (d) 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
- (e) without lawful authority or excuse, the proof whereof lies on him, manufactures or sells or has in his possession for sale any die, seal or stamp referred to in paragraph (e) of subsection (1); shall be guilty of an offence and liable to a fine not exceeding level twelve or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

## **6 Obstructing persons on guard at or loitering near prohibited places** Any

person who—

- (a) in the vicinity of a prohibited place, obstructs, knowingly misleads or otherwise interferes with a person engaged on guard, sentry, patrol or other similar duty in relation to the prohibited place; or
- (b) is found loitering within one hundred metres of a prohibited place and who fails to depart therefrom upon being requested to do so by any person referred to in paragraph (a);

shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

## **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 in terms of this Act or knowingly permits any such persons to meet or assemble in any premises in his occupation or under his control; or
- (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) being aware that any foreign agent or any person who has been or is in communication with a foreign agent, whether in Zimbabwe or elsewhere, is in Zimbabwe, 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 to a fine not exceeding level twelve or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

## **8 Communication with foreign agent proof of certain facts**

(1) For the purposes of this section—

- (a) a person shall, unless he proves the contrary, be presumed to have been in communication with a foreign agent if—
  - (i) he has, in Zimbabwe or elsewhere, visited the address of a foreign agent or associated or consorted with a foreign agent; or
  - (ii) in Zimbabwe 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;
- (b) any place in Zimbabwe or elsewhere reasonably suspected of being a place 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 or delivers communications to or collects communications from such an address shall be deemed to have been in communication with a foreign agent.

(2) If, in any prosecution against a person for an offence in terms of section *three*, it is proved that he has been in communication with or attempted to communicate with a foreign agent in Zimbabwe or elsewhere, it shall, unless the contrary is proved, be presumed that he has for a purpose prejudicial to the safety or interests of Zimbabwe obtained or attempted to obtain information which is calculated to be or which might or is intended to be, directly or indirectly, useful to an enemy.

## **9 Proof of purpose prejudicial to safety or interests of Zimbabwe**

(1) If, in any prosecution under this Act upon a charge of committing an act for a purpose prejudicial to the safety or interests of Zimbabwe, it appears from the circumstances of the case or the conduct or known character of the accused as proved that his purpose was a purpose prejudicial to the safety or interests of Zimbabwe, it shall be presumed, unless the contrary is proved, that the purpose for which that act has been committed is a purpose prejudicial to the safety or interests of Zimbabwe.

(2) If, in any prosecution under this Act upon a charge of making, obtaining, collecting, recording, publishing or communicating any thing for a purpose prejudicial to the safety or interests of Zimbabwe, 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, unless the contrary is proved, be presumed that the purpose for which it was made, obtained, collected, recorded, published or communicated is a purpose prejudicial to the safety or interests of Zimbabwe.

## **10 Forfeiture**

Where a person is convicted of an offence in terms of this Act a court may, in addition to any fine or term of imprisonment imposed in terms of this Act, order that any equipment used for the purpose of or in connection with the commission of the offence shall be forfeited to the State:

Provided that if it is proved that such equipment is not the property of the person convicted and that its owner was—

- (a) unaware that the equipment was being so used; and
  - (b) unable to prevent its use for the purpose of or in connection with the commission of the offence;
- the court shall not make any such order in respect thereof.

### **11 Authority of Attorney-General required for institution of criminal proceedings**

Where any person is brought before a court on a charge of— (a) committing an offence in terms of this Act; or

- (b) attempting to commit or inciting another person or conspiring with another person to commit an offence in terms of this Act; or
- (c) being an accessory after the fact of the commission of an offence in terms of this Act; no further proceedings in respect thereof shall be taken against him without the authority of the Attorney-General except such as the court may think necessary by way of remand to secure the due appearance of the person charged.

### **12 Extra-territorial application of Act**

(1) This Act shall apply also in respect of any act which constitutes an offence in terms of this Act and is committed outside Zimbabwe by a person who is a citizen or resident of Zimbabwe.

(2) A person shall not be deemed to have ceased to be a resident of Zimbabwe for the purposes of subsection

- (1) by reason only of his absence therefrom, if— (a) he retains a home in Zimbabwe; or
- (b) he is absent from Zimbabwe for a temporary purpose; or (c) he is domiciled in Zimbabwe.

(3) In any proceedings for any offence referred to in subsection (1) it shall be presumed, unless the contrary is proved, that the person accused was at all times a citizen or resident of Zimbabwe.

### **13 Declaration of prohibited place**

(1) If it appears to the President to be necessary or expedient that any premises or area should be a prohibited place for the purposes of this Act, he may by order declare such premises or area to be a prohibited place for the purposes of this Act.

(2) An order in terms of subsection (1)—

(a) shall be made in writing signed by or on behalf of the President and addressed to the owner or occupier of the premises or area; and (b) shall specify—

- (i) the extent of the premises or area declared to be a prohibited place; and
- (ii) any measures necessary for demarcating the premises or area; and

(c) shall be served on the owner or occupier of the premises or area by a person appointed by the President:

Provided that where the premises or area is owned by the State or occupied by a department of the State, the order shall be addressed to and served on the Secretary to the Ministry responsible for the administration of the premises or area or occupying the premises or area, as the case may be.

(3) The owner or occupier of any premises or area on whom an order is served in terms of subsection (2) shall, at his own expense, erect or cause to be erected at or near such premises or area, within such period as may be specified by the President in the order, warning notices in accordance with such provisions as may be specified by the Minister by notice in a statutory instrument.

(4) If the owner or occupier fails to comply with subsection (3), the Minister may cause such measures to be taken and recover by action in a competent court the expenses incurred in doing so from the owner or occupier concerned.

(5) The President may at any time revoke or amend an order in terms of subsection (1) by causing a further order in writing signed by him or on his behalf to be served on the owner or occupier of the premises or area to which the first-mentioned order relates.