

LAWS OF BRUNEI

CHAPTER 153
OFFICIAL SECRETS ACT

4 of 1940

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CHAPTER 153
OFFICIAL SECRETS

ARRANGEMENT OF SECTIONS

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OFFICIAL SECRETS ACT**An Act to provide for the protection of official secrets**

Commencement: 2nd. December, 1940

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

Short title.

2. In this Act, unless there is something repugnant in the subject or context —

Interpretation.

“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, bomb, 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 against this Act” includes any act, omission, or other thing which is punishable under this Act;

“officer of police” includes any person upon whom the powers of a police officer not below the rank of inspector are conferred by His Majesty The Sultan and Yang Di-Pertuan under section 19;

“Cieneral Officer Commanding” means the military officer in command of His Majesty’s Forces in Brunei Darussalam:

“prohibited place” means —

- (i) any work of defence, arsenal, naval, military or air-force establishment,

barrack, camp or station, factory, dockyard, mine, mine-field, 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, proving, testing or storing any munitions of war, or any photographs, drawings, plans models, or documents relating thereto, or for the purpose of getting or storing any metals, oil, mechanical transport spirit or aviation spirit or minerals of use in time of war;

- (ii) any place not belonging to the Government where any munitions of war, oil, mechanical transport spirit, aviation spirit, fuel or supplies or any photographs, drawings, models, plans, or documents relating thereto, are being made, repaired, gotten, or stored under contract with, or with any person on behalf of, or otherwise on behalf of the Government;
- (iii) any place belonging to or used for the purposes of the Government which is for the time being declared by order of His Majesty The Sultan and Yang Di-Pertuan 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 a foreign power or to an enemy.
- (iv) any railway, tramway, roadway, or channel or other means of communication by land or water (including any bridges, tunnels, piers, works or structures being

part thereof, or connected or used therewith), or any beach, foreshore or the whole or any part of the territorial waters of the State, or any searchlight, lighthouse, buoy or other navigational aid, or any public building, fire station, aerodrome or air station, or any signal telegraph or radio station, or any place used for gas, water, electricity or engineering works or other works for purposes of a public character, or any place where any munitions of war or oil, mechanical transport spirit, aviation spirit, fuel or supplies or any photographs, drawings, models, plans or documents relating thereto are being made, repaired, or stored otherwise than on behalf of the Government, any of the aforesaid being a place which is for the time being declared by order of His Majesty The Sultan and Yang Di-Pertuan 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 a foreign power or to an enemy;

- (v) any area being in the vicinity of 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, which is declared by order of His Majesty The Sultan and Yang Di-Pertuan 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 a foreign power or to an enemy;

“photograph” includes a photographic negative or a plate produced by photographic process and any printed or other pictorial representation or drawing produced in whole or part by photographic means;

“drawing” includes any plan, sketch, tracing, painting, print or other pictorial representation.

Expressions referring to communicating or receiving include any communicating or receiving, whether in whole or in part, and whether the photograph, drawing, 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 photograph, drawing, plan, model, article, note, or document, include the copying or causing to be copied the whole or any part of any photograph, drawing, plan, model, article, note, or document, and expressions referring to the communication of any photograph, drawing, plan, model, article, note or document include the transfer or transmission of the photograph, drawing, plan, model, article, note or document.

Penalties for
spying.

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

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

(b) makes any photograph, drawing, plan, model, or note which is calculated to be or might be or is intended to be directly or indirectly useful to a foreign power or to an enemy; or

(c) obtains, collects, records, publishes or communicates to any other person any secret official code word, countersign or pass word, or any photograph, drawing, 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 a foreign power or to an enemy;

he shall be guilty of an offence under this Act.

(2) Any person who takes or makes any photograph, drawing, map, measurement, sounding or survey of or within a prohibited place, shall, unless he proves that the thing so taken or made is not prejudicial to the safety or interests of Brunei Darussalam and is not intended to be directly or indirectly useful to a foreign power or to an enemy, be guilty of an offence under this Act:

Provided that it shall not be an offence under this subsection to take or make, outside a prohibited place a photograph or drawing in which such place or part thereof is included, unless it is proved that the photograph or drawing is intended to be prejudicial to the safety or interests of Brunei Darussalam or to be directly or indirectly useful to a foreign power or to an enemy. This proviso does not apply to any photograph taken from an aircraft:

Provided further that the taking or making of any photograph, drawing, map, measurement, sounding or survey in accordance with the terms and conditions in such permit as the Minister sees fit to give shall not be an offence under this subsection. It may be a term or condition of such permit that anything so taken or made must immediately be submitted to the Minister for examination who, if satisfied that there is reasonable cause to believe that the thing so taken or made contains matter or information prejudicial to the safety or interests of Brunei Darussalam and directly or indirectly useful to a foreign power or to an enemy, may give such orders in respect of the thing as he is empowered to give under subsection (5) of this section.

(3) Any person who makes or assists in making a declaration or statement false in any material respect for the purpose of obtaining a permit from the Minister shall be guilty of any offence and shall on conviction before the Court of a Magistrate be liable notwithstanding anything contained in the Criminal Procedure Code to a fine not exceeding \$10,000.

Cap. 7.

(4) 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 Brunei Darussalam 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, or from his having acted in contravention of section 6 of this Act or in the manner mentioned in section 7 hereof it appears that his purpose was a purpose prejudicial to the safety or interests of Brunei Darussalam; and if any photograph, drawing, plan, model, article, note, document, or information relating to or used any prohibited place within the meaning of this Act, or anything in such a place, or any secret official code word, countersign 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 Brunei Darussalam unless the contrary is proved.

(5) If the Court of a Magistrate is satisfied that there is reasonable cause to believe that a photograph or drawing contains matter or information prejudicial to the safety or interests of Brunei Darussalam and directly or indirectly useful to a foreign power or to an enemy, the Court may issue a search warrant to search for and seize such photograph or drawing even though an offence against this Act is not alleged to have been committed. The photograph or drawing if seized under the search warrant or voluntarily produced by the person in whose possession it is shall be sent by the Court to the Minister who may if he considers that the photograph or drawing contains matter or information prejudicial to the safety or interests of Brunei Darussalam and directly or indirectly useful to a foreign power or to an enemy order the photograph or drawing to be forfeited, or order that any part of such photograph or drawing be obliterated, erased or removed.

Cameras
prohibited
except under
permit.

4. (1) Any person who within a prohibited place has any apparatus for taking or making photographs in his possession without a permit in writing in that behalf signed by the Minister shall be liable to a fine not exceeding \$1,000:

Provided that it shall not be an offence against this section for any person residing within any prohibited place to possess any such apparatus within such place without a permit.

(2) Any such apparatus in respect of which an offence has been or is suspected of having been committed may be seized by any person duly authorised in that behalf by the Minister for such prohibited place and any plate or film in or belonging to such apparatus may also be seized and may be subjected to such process of development as the Minister may direct either generally or in any particular case.

5. If any person having in his possession or control any secret official code word, countersign or pass word, or any photograph, drawing, plan, model, article, note, document, information or information which —

Wrongful
communic-
ation, etc., of
information.

(a) relates to or is used in a prohibited place or anything in such a place; or

(b) relates to munitions of war; or

(c) has been made or obtained in contravention of this Act; or

(d) has been entrusted in confidence to him by any person holding office under the State; or

(e) 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 State, or as a person who holds or has held a contract made on behalf of the State, or as a person who is or has been employed under a person who holds or has held such an office or contract;

does any of the following, that is to say —

(i) communicates directly or indirectly any such information or thing as aforesaid to any foreign power other than a foreign power to whom he is duly authorised to communicate it, or to any person other

than a person to whom he is authorized to communicate it or to whom it is his duty to communicate it; or

- (ii) uses any such information or thing as aforesaid for the benefit of any foreign power other than a foreign power for whose benefit he is authorised use it, or in any manner prejudicial to the safety or interests of Brunei Darussalam; or
- (iii) retains in his possession or control any such thing as aforesaid when he has not right to retain it, or when it is contrary to his duty to retain it, or fails to comply with all lawful directions issued by lawful authority with regard to the return or disposal thereof; or
- (iv) fails to take reasonable care of, or so conducts himself as to endanger the safety or secrecy of, any such information or thing as aforesaid; or
- (v) receives any such information or thing as aforesaid, knowing or having reasonable ground to believe at the time when he received it that the information or thing is communicated to him in contravention of this Act, unless he proves that the reception by him of the said information or thing was not directly or indirectly solicited by him:

that person shall be guilty of an offence under this Act.

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

6. (1) If any person gains or assists any other person to gain admission to a prohibited place otherwise than by an authorized point of entry or 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 Brunei Darussalam within the meaning of this 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) makes use of any disguise or false name, or knowingly conceals his identity or nationality; or

(c) 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

(d) 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

(e) personates, or falsely represents himself to be, a person holding or in the employment of a person holding office under the State, or personates, or falsely represents himself to be or not to be, a person to whom an official document or secret or ficial code word, countersign or pass word has been duly issued or communicated; or

(f) uses, or has in his possession or under his control, without the authority of the Government Department or the authority concerned, any die, key, badge, device, 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 His Majesty's Government, or any key, badge, device, die,

seal or stamp so nearly resembling any such articles as aforesaid as to be calculated to deceive, or counterfeits any such articles as aforesaid, or uses, or has in his possession, or under his control, any such counterfeited articles as aforesaid;

he shall be guilty of an offence under this Act.

(2) If any person —

(a) retains for any purpose prejudicial to the safety or interests of Brunei Darussalam 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, countersign or pass word so issued or, without lawful authority or excuse, has in his possession any official document or secret official code word, countersign 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 the Commissioner of Police; or

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

(d) with intent to obtain an official document, secret official code word, countersign or pass word, whether for himself or for any other person, knowingly makes any false statement;

he shall be guilty of an offence under this Act.

(3) In the case of any prosecution under this section involving the proof of a purpose prejudicial to the safety or interests of Brunei Darussalam, subsection (4) of section 3 shall apply in like manner as it applies to prosecutions under that section.

7. (1) In any proceeding 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 the State, shall be evidence that he has, for a purpose prejudicial to the safety or interests of Brunei Darussalam, obtained or attempted to obtain or to communicate information which is calculated to be or might be or is intended to be directly or indirectly useful to a foreign power or to an enemy.

Communications with foreign agents to be evidence of commission of certain offences.

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

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

- (i) he has, either within or without the State, visited the address of a foreign agent or consorted or associated with a foreign agent, or
- (ii) either, within or without the State 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 Communications with foreign agents to be evidence of commission of certain offences act, either within or without the State, prejudicial to the safety or interests of Brunei Darussalam, or who has or is reasonably suspected of having, either within or without the State, committed, or attempted to commit, such an act in the interests of a foreign power;

(c) Any address, whether within or without the State, 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 an address to be communications with a foreign agent.

Interfering
with police
officers or
members of
His Majesty's
forces.

8. No person within or in the vicinity of any prohibited place shall obstruct, knowingly mislead or otherwise interfere with or impede, any police office, or any member of His Majesty's forces engaged on 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 an offence under this Act.

Power to
require the
production of
telegraphic
messages.

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 messages to or from any place out of the State, to produce to him, or to any person named in the warrant, the originals and transcripts, either of all messages, or of telegrams of any specified class or description, or of messages sent from or addressed to any specified person or place, sent or received to or from any place out of the State by means of any such cable, wire or apparatus, and all other papers relating to any such message 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, or mutilates or destroys the same, shall be guilty of an offence under this Act.

(3) In this section the expression “message” shall have the same meaning as in the Telecommunications Act.

Cap. 54.

10. It shall be the duty of every person to give on demand to any police officer not below the rank of inspector, or to any officer of His Majesty’s forces on duty, or to any member of His Majesty’s forces 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 an offence under this Act.

Duty to give information.

11. (1) 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, 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 police officer any information which it is in his power to give in relation to any such person, he shall be guilty of an offence under this Act.

Harbouring.

(2) In this section the word “harbour” includes the supplying a person with shelter, food, drink, money, clothes, arms, ammunition, or means of conveyance, or the assisting a person in any way to commit an offence under this Act.

12. Any person who attempts to commit any offence under this Act, or solicits or incites or endeavours to persuade, or conspires with another person to commit an offence, or aids or

Attempts, incitements, etc.

abets or does any act preparatory to the commission of an offence under this Act, shall be guilty of an offence under this Act, and on conviction shall be liable to the same punishment, and to be proceeded against in the same manner, as if he had committed the offence.

Power to
arrest.

13. (1) Any person who is found committing an offence under this Act, or who is reasonably suspected of having committed, or having attempted to commit, or being about to commit, such an offence, may be arrested without a warrant.

(2) Without limiting the generality of subsection (1) any commissioned officer, warrant officer, petty officer, noncommissioned officer or leading rating of His Majesty's naval or military or air forces in the State and any police officer may, with or without a warrant or other process, apprehend or cause to be apprehended any person found in a prohibited place or on lands or premises in the occupation of His Majesty's naval or military or air forces offending against this Act or suspected of so offending, and shall forthwith bring or cause to be brought the person so apprehended before the Court of a Magistrate for the purpose of being dealt with according to law.

Restriction on
prosecution.

14. (1) A prosecution for an offence under this Act shall not be instituted except by or with the consent of the Public Prosecutor:

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 Public Prosecutor to the institution of a prosecution for the offence has not been obtained, but the case shall not be further prosecuted until that consent has been obtained.

(2) When a person is brought before a Court under this section before the Public Prosecutor has consented to the prosecution the charge shall be explained to him but he shall not be called upon to plead, and thereafter he shall be remanded in custody pending the consent of the Public Prosecutor to the prosecution.

15. (1) A Magistrate if he is satisfied by information on oath or affirmation that there is reasonable ground for suspecting that an offence under this Act has been or is about to be committed, may grant a search warrant authorizing any police officer named therein, or authorizing if so requested any police officer accompanied by an officer deputed by the General Officer Commanding, to enter at any time any premises or place specified in the warrant, if necessary by force, and to search the premises or place and every person found therein, and to seize and retain any photograph, drawing, plan, model, article, note or document or anything of a like nature or anything which is or may be 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 connection with which he has reasonable ground for suspecting that an offence under this Act has been or is about to be committed.

Search
warrants.

(2) When it appears to an officer of police not below the rank of inspector that the case is one of great emergency and that in the interest of the State immediate action is necessary, he may, by a written order under his hand give to any constable the like authority as may be given by the warrant of a Magistrate under this section.

16. (1) Where the Commissioner of Police is satisfied that there is reasonable ground for suspecting that an offence under this Act has been or is about to be committed and for believing that any person is able to furnish information as to the offence or suspected offence, he may apply to the Minister for permission to exercise the powers conferred by this subsection and, if such permission is granted, he may personally, or by written authorisation granted to any police officer not below the rank of inspector, require the person believed to be able to furnish information to give any information in his power relating to the offence or suspected offence, and, if so required and on tender of his reasonable expenses, to attend at such reasonable time and place as may be specified by the Commissioner of Police; and if a person required in pursuance of such an authorization to give information, or to attend as aforesaid, fails to comply with any

Power to
commissioner
of Police to
require
information.

such requirement or knowingly gives false information, he shall be guilty of an offence under this Act.

(2) Where the Commissioner of Police has reasonable grounds to believe that the case is one of great emergency and that in the interest of the State immediate action is necessary, he may exercise the powers conferred by the last foregoing subsection without applying for or being granted the permission of the Minister, but if he does so shall forthwith report the circumstances to the Minister.

(3) References in this section to the Commissioner of Police shall be construed as including references to any other officer of police expressly authorized by him to act on his behalf for the purpose of this section when by reason of illness, absence, or other cause he is unable to do so.

Trial of
offences.

17. (1) For the purposes of the trial of a person for an offence under this Act, the offence shall be deemed to have been committed either at the place in which the same actually was committed, or at any place in the State in which the offender may be found.

(2) 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 an offence 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 safety of Brunei Darussalam, 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.

(3) Where the person guilty of an offence under this Act is a company or corporation, or a member or servant of a partnership or firm, acting in the course of the business of the partnership or firm every director and officer of the company or

corporation or every member of the partnership or firm (as the case may be) 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.

18. (1) A person who is guilty of an offence under this Act by reason of section 3 shall be liable to imprisonment of either description for a term not exceeding 14 years, and shall also be liable to a fine not exceeding \$10,000. Punishment.

(2) A person who is guilty of an offence under this Act by reason of section 5,6,8,9,10,11 or 16 shall, notwithstanding anything contained in the Criminal Procedure Code, be liable on conviction before the Court of a Magistrate to imprisonment of either description for a term not exceeding 2 years, and shall also be liable to a fine not exceeding \$10,000. Cap. 7.

19. His Majesty The Sultan and Yang Di-Pertuan may confereupon any person whom he deems fit and suitable the powers of a police officer not below the rank of inspector for the purposes of this Act. Powers His Majesty The Sultan.

20. Nothing in this Act shall be deemed to limit or restrict any powers conferred by the Criminal Procedure Code. Saving.
Cap. 7.