

BECHUANALAND PROTECTORATE

No. 69 of 1922.

[Promulgated 20th October, 1922.]

PROCLAMATION

BY HIS ROYAL HIGHNESS THE HIGH COMMISSIONER
Entitled the Official Secrets (Bechuanaland Protectorate)
Proclamation, 1922.

Whereas it is expedient to amend the Official Secrets (Bechuanaland Protectorate) Proclamation 1914 (herein after referred to as "the principal law") and to make further provision in terms similar to those of the Official Secrets Act 1920 of the United Kingdom for the purpose of preventing persons from obtaining or disclosing official secrets in the Bechuanaland Protectorate;

Now therefore under and by virtue of the powers in me vested I do hereby declare, proclaim and make known as follows:—

1. (1) If any person for the purpose of gaining admission, or of assisting any other person to gain admission, to a prohibited place, within the meaning of the principal law or for any other purpose prejudicial to the safety or interests of the State within the meaning of the principal law

(a) uses or wears, without lawful authority, any naval, military, air force, police, or other official uniform, or any uniform so nearly resembling the same as to be calculated to deceive, or falsely represents himself to be a person who is or has been entitled to use or wear any such uniform; or

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

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

(d) personates, or falsely represents himself to be a person holding or in the employment of a person holding office under His Majesty, or to be or not to be a person to whom an official document or secret official code word or password has been duly issued or communicated, or with intent to obtain an official document, secret official code word or password, whether for himself or any other person, knowingly makes any false statement; or

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

he shall be guilty of an offence.

(2) If any person

- (a) retains for any purpose prejudicial to the safety or interests of the State any official document, whether or not completed or issued for use, when he has no right to retain it, or when it is contrary to his duty to retain it, or fails to comply with any directions issued by any Government Department or any person authorized by such department with regard to the return or disposal thereof; or
- (b) allows any other person to have possession of any official document issued for his use alone, or communicates any secret official code word or password so issued, or, without lawful authority or excuse, has in his possession any official document or secret official code word or password issued for the use of some person other than himself, or on obtaining possession of any official document by finding or otherwise, neglects or fails to restore it to the person or authority by whom or for whose use it was issued, or to a European member of the Police Force; or
- (c) without lawful authority or excuse, manufactures or sells, or has in his possession for sale any such die, seal or stamp as aforesaid;

he shall be guilty of an offence.

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

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

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

- (a) a person shall, unless he proves the contrary, be deemed to have been in communication with a foreign agent if
 - (i) he has, either within or without the Bechuanaland Protectorate, visited the address of a foreign agent or consorted or associated with a foreign agent; or
 - (ii) either, within or without the Bechuanaland Protectorate, the name or address of, or any other information regarding a foreign agent has been found in his possession, or has been supplied by him to any other person or has been obtained by him from any other person;
- (b) the expression "foreign agent" includes any person who is or has been or is reasonably suspected of being or having been employed by a foreign power either directly or indirectly for the purpose of committing an act, either within or without the Bechuanaland Protectorate, prejudicial to the safety or interests of the State, or who has or is reasonably suspected of having, either within or without the Bechuanaland Protectorate, committed, or attempted to commit, such an act in the interests of a foreign power;
- (c) any address, whether within or without the Bechuanaland Protectorate, 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.

3. No person in the vicinity of any prohibited place shall obstruct, knowingly mislead or otherwise interfere with or impede any member of the police or any member of His Majesty's forces engaged on guard, sentry, patrol, or other similar duty in relation to the prohibited place, and, if any person acts in contravention of or fails to comply with, this provision, he shall be deemed guilty of an offence.

4. (1) Where it appears to the Resident Commissioner 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 telegraph or telegraph line used for the sending or receipt of telegrams to or from any place out of the Bechuanaland Protectorate, to produce to him, or to any person named in the warrant, the originals and transcripts, either of all telegrams, or of telegrams of any specified class or description, or of telegrams sent from or addressed to any specified person or place, sent or received to or from any place out of the Bechuanaland Protectorate by means of any such cable, wire, or apparatus, and all other papers relating to any such telegram as aforesaid.

(2) Any person who, on being required to produce any such original or transcript or paper as aforesaid, refuses or neglects to do so shall be guilty of an offence under this Proclamation, and shall, for each offence, be liable on conviction to imprisonment with or without hard labour for a term not exceeding three months, or to a fine not exceeding fifty pounds, or to both such imprisonment and fine.

(3) In this section the expressions "telegraph," "telegraph line" and "telegram" shall have respectively the same meaning as in Act No. 10 of 1911 of the Union of South Africa as applied to the Bechuanaland Protectorate by Proclamation No. 28 of 1916.

5. It shall be the duty of every person to give on demand to any officer of police, not below the rank of sub-inspector, or to any member of His Majesty's Forces engaged on guard, sentry, patrol, or similar duty, any information in his power, relating to an offence or suspected offence under the principal law or this Proclamation, 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.

6. Any person who attempts to commit any offence under the principal law or this Proclamation, or solicits or incites or endeavours to persuade another person to commit an offence, or aids or abets and does any act preparatory to the commission of an offence under the principal law or this Proclamation, shall be guilty of an offence, 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.

7. (1) Any person who is guilty of an offence under section one of the principal law shall be liable on conviction to imprisonment for a term not exceeding fourteen years.

(2) Any person who is guilty of an offence under this Proclamation for which no penalty is specially provided shall be liable on conviction to imprisonment, with or without hard labour, for a period not exceeding two years, or to a fine not exceeding two hundred pounds, or to both such imprisonment and fine.

(3) No offence under the principal law or this Proclamation shall be dealt with summarily except with the consent of the Crown Prosecutor for the Bechuanaland Protectorate.

(4) For the purposes of the trial of a person for an offence under the principal law or this Proclamation, 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 Bechuanaland Protectorate in which the offender may be found.

(5) 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 the principal law or this Proclamation or the proceedings on appeal, or in the course of the trial of a person for an offence under the principal law or this Proclamation, application is made by the prosecution, on the ground that the publication of any evidence to be given or of any statement to be made in the course of the proceedings would be prejudicial to the national safety, that all or any portion of the public should 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.

(6) Where the person guilty of an offence under the principal law or this Proclamation is a company or corporation every director and officer of the company or corporation shall be guilty of the like offence unless he proves that the act or omission constituting the offence took place without his knowledge or consent.

8. The principal law shall have effect as though

(1) after paragraph (a) of sub-section (1) of section *two* the following paragraph were inserted:—

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

and after the said sub-section (1) the following sub-section were inserted:—

(1A) If any person having in his possession or control any sketch, plan, model, article, note, document, or information which relates to munitions of war, communicates it directly or indirectly to any foreign power, or in any other manner prejudicial to the safety or interests of the State, that person shall be guilty of an offence; and

(2) In section *twelve*, after the definition of "sketch" the following definition were inserted:—

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

9. The amendments specified in the second column of the First Schedule to this Proclamation (which relate to minor details) shall be made in the provisions of the principal law specified in the first column of that Schedule.

10. The provisions of the principal law mentioned in the Second Schedule to this Proclamation are hereby repealed.

11. This Proclamation may be cited for all purposes as the Official Secrets (Bechuanaland Protectorate) Proclamation 1922 and shall be construed as one with the principal law and shall have force and effect from the date of its publication in the *Gazette* and the principal law and this Proclamation may be cited together as the Official Secrets (Bechuanaland Protectorate) Proclamations 1914 and 1922.

GOD SAVE THE KING.

Given under my Hand and Seal at Pretoria this Sixteenth day of October One thousand Nine hundred and Twenty-two.

ARTHUR FREDERICK,
High Commissioner.

By Command of His Royal Highness the
High Commissioner.

H. J. STANLEY,
Imperial Secretary.

SCHEDULES.

FIRST SCHEDULE.

Minor Amendments of Principal Law.

<i>Enactment.</i>	<i>Nature of Amendment.</i>
Section 1 (1) (a)	After the word "approaches" there shall be inserted the words "inspects, passes over."
Section 1 (1) (c)	After the word "obtains" there shall be inserted the words "collects, records or publishes," and after the words "any other person" there shall be inserted the words "any secret official code word, or password or."
Section 1 (2)	After the words "in such a place" there shall be inserted the words "or any secret official code word or password." After the word "obtained" in both places where it occurs, there shall be inserted the words "collected, recorded, published."
Section 2 (1)	After the words "possession or control" there shall be inserted the words "any secret official code word or password or." After the words "which he has obtained" there shall be inserted the words "or to which he has had access." After the words "communicates the" there shall be inserted the words "code word, password." After the words "his duty to retain it" there shall be inserted the words "or fails to comply with all directions issued by lawful authority with regard to the return or disposal thereof." After paragraph (b) there shall be inserted the following paragraph:— or (c) fails to take reasonable care of, or so conducts himself as to endanger the safety of the sketch, plan, model, article, note, document, secret official code or pass word or information.
Section 2 (2)	Before the word "sketch" where that word first occurs there shall be inserted the words "secret official code word or password, or." Before the word "sketch" in other places where it occurs there shall be inserted the words "code word, password."
Section 3	For paragraph (a) the following paragraph shall be substituted:— Any work of defence, arsenal, naval or air force establishment or station, factory, dockyard, mine, mine-field, camp, ship or aircraft belonging to or occupied by or on behalf of His Majesty, 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 His Majesty and used for the purpose of building, repairing, making or storing any munitions of war, or any sketches, plans, models, or documents relating thereto, or for the purpose of getting any metals, oil or minerals of use in time of war.

Enactment.

Nature of Amendment.

In paragraphs (b) and (d) for the words "ship, arms, or other materials or instruments of use in time of war" in both places where they occur, there shall be substituted the words "munitions of war," and for the word "plans" in both places where it occurs, there shall be substituted the words "sketches, models, plans."

In paragraph (b) after the word "repaired" there shall be inserted the word "gotten."

In paragraph (c) after the words "any place belonging to" there shall be inserted the words "or used for the purposes of."

In paragraphs (c) and (d) for the words "by a Secretary of State" in both places where those words occur, there shall be substituted the words "by order of the High Commissioner."

Section 7

For the words "wilfully refuses" there shall be substituted the words "wilfully omits or refuses."

SECOND SCHEDULE.

Provisions of Principal Law Repealed.

In sub-section (1) of section one the words "and shall be liable to imprisonment with or without hard labour for any term not less than three years and not exceeding seven years."

Section four.