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# NATIONAL INTELLIGENCE AGENCY BILL, 2017

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## NATIONAL INTELLIGENCE AGENCY BILL, 2017

**A BILL FOR AN ACT TO ESTABLISH A BODY TO BE KNOWN AS  
THE NATIONAL INTELLIGENCE AGENCY AND TO PROVIDE FOR  
ITS FUNCTIONS, POWERS, ORGANIZATION AND MANAGEMENT  
AND FOR CONNECTED PURPOSES**

**Enacted by the Parliament of The Bahamas**

### **PART I - PRELIMINARY**

**1. Short title and commencement.**

- (1) This Act may be cited as the National Intelligence Agency Act, 2017.
- (2) This Act shall come into operation on such date as the Minister may appoint by notice published in the *Gazette*.

**2. Interpretation.**

In this Act —

“**Agency**” means the body established under section 4;

“**department**” in relation to the government of The Bahamas, includes —

- (a) any portion of a department of the Government of The Bahamas; and
- (b) any institution or other body or entity of the Government of The Bahamas;

“**Director**” means the person appointed to the office of Director of National Intelligence in accordance with section 7;

“**foreign intelligence**” means intelligence about the capabilities, intentions or activities of people or organisations outside of The Bahamas;



**“foreign organisation”** means a company or other entity that is incorporated under the law of a foreign country and includes an unincorporated entity consisting of a majority of foreign persons or which carries on activities wholly or partly outside The Bahamas;

**“foreign power”** means —

- (a) a foreign government;
- (b) an entity that is directed or controlled by a foreign government or governments; or
- (c) a foreign organisation;

**“law enforcement agency”** means an authority of The Bahamas that has functions relating to law enforcement;

**“Minister”** means the Minister with responsibility for national security;

**“permanent resident”** has the meaning assigned to it under sections 13 and 14 of the Immigration Act (*Ch. 191*);

**“premises”** includes any land, place, vehicle, vessel or aircraft;

**“public officer”** has the meaning as defined in the Constitution;

**“Review Committee”** means the oversight body established under section 15;

**“security assessments”** means an assessment of the security of —

- (a) the nation;
- (b) persons;
- (c) premises;
- (d) any mode of transport;

**“security”** means safety, peace, order and democratic governance;

**“seizable items”** means anything that could present a danger to a person or that could be used to assist a person to escape from lawful custody;

**“threats to the security of The Bahamas”** or **“security threat”** means —

- (a) any act of terrorism;
- (b) espionage or sabotage by any agent of a foreign power or foreign interest that is against The Bahamas or is detrimental to the interests of The Bahamas, including its constitutional order, foreign relations, or activities directed toward or in support of such espionage or sabotage;
- (c) activities relating to The Bahamas directed toward or in support of the threat or use of acts of serious violence against persons or property for the purpose of achieving a political,



religious or ideological objective within The Bahamas or a foreign state; and

- (d) activities intended to —
  - (i) undermine, by covert or unlawful acts;
  - (ii) destroy or overthrow by violence,the constitutionally established system of government in The Bahamas, but does not include lawful advocacy, protest or dissent, unless carried out in conjunction with any of the activities referred to in paragraphs (a) to (c) and this paragraph.

### **3. Objectives of Act.**

The objectives of this Act are to establish a body to—

- (a) coordinate intelligence gathering and joint strategic planning among the various law enforcement agencies and government departments so as to ensure a more effective campaign against threats to the security of The Bahamas;
- (b) collect by investigation or otherwise, information and intelligence related to activities that may on reasonable grounds be suspected of constituting threats to the security of The Bahamas.

## **PART II – NATIONAL INTELLIGENCE AGENCY**

### **ESTABLISHMENT, FUNCTIONS AND POWERS**

#### **4. Establishment of National Intelligence Agency.**

- (1) There is hereby established a body to be known as the National Intelligence Agency.
- (2) The Agency shall be under the control of the Director.
- (3) The Agency shall consist of the office of Director and its employees.

#### **5. Functions of Agency.**

- (1) The functions of the Agency are to —
  - (a) collect information and intelligence by investigation or otherwise, to the extent that is strictly necessary;
  - (b) analyse and retain information and intelligence related to activities that may on reasonable grounds be suspected of constituting threats to the security of The Bahamas;
  - (c) coordinate intelligence gathering;

- (d) cooperate with and assist a law enforcement agency in the gathering or provision of intelligence;
  - (e) establish channels of communication with overseas intelligence and security focal points for the promotion and exchange of information and intelligence;
  - (f) provide the National Security Council with information relating to security matters or criminal activities, that are relevant to the exercise of any lawful power or the performance of any lawful duty or function of the National Security Council or any member thereof;
  - (g) do all such lawful things as are incidental or conducive to the attainment of the lawful objectives of the Agency.
- (2) The Agency may perform its functions under subsection (1), within or outside The Bahamas.

## **6. Powers of Agency.**

- (1) In carrying out its functions, the Agency may —
- (a) with the approval of the Minister enter into a written arrangement with —
    - (i) any department; or
    - (ii) The Royal Bahamas Police Force or The Royal Bahamas Defence Force,
- authorising the Agency to provide security assessments and including the coordination by the Agency with all law enforcement agencies of the measures and strategies being pursued in the gathering of intelligence by them particularly with respect to the offences or categories of offences specified in the *First Schedule*;
- (b) conduct such investigations as are required for the purpose of providing security assessments to the National Security Council;
  - (c) in relation to the defence of The Bahamas or the conduct of its international affairs, assist the Minister and the Minister of Foreign Affairs, in the collection of information or intelligence relating to the capabilities, intention or activities of any foreign state or group of foreign states.
- (2) The Minister may by order add to or delete from the category of offences specified in the *First Schedule*.

## **PART III – ORGANISATION, MANAGEMENT AND OVERSIGHT OF AGENCY**

### **APPOINTMENT AND FUNCTIONS OF DIRECTOR**

#### **7. Appointment of Director.**

- (1) The Governor-General shall, on the advice of the Prime Minister, appoint a person to hold the office of the Director of National Intelligence (hereinafter referred to as “the Director”) subject to the provisions of this Act and such other terms and conditions specified in writing by the Governor-General at the time of the appointment, which terms and conditions shall not be altered to the disadvantage of the Director during his term of office.
- (2) The Prime Minister shall, prior to advising the Governor-General as to whom may be appointed, consult with the Leader of the Opposition.
- (3) A person appointed to hold the office of the Director of National Intelligence must possess a background at a senior level in law enforcement, national defence or intelligence gathering.
- (4) The provisions of the *Second Schedule* shall have effect with respect to the office of Director.

#### **8. Functions of Director.**

- (1) The Director shall —
  - (a) carry out the functions of the Agency; and
  - (b) take all reasonable steps to ensure that —
    - (i) the work of the Agency is limited to what is necessary for the purposes of the discharge of its functions; and
    - (ii) the Agency is kept free from any influences or considerations not relevant to its functions and nothing is done that might lend support to any suggestion that it is concerned to further or protect the interests of any particular section of the community, political party or with any matters other than the discharge of its functions.
- (2) In performing his functions under this Act, the Director shall be subject to the directions of the Minister given in accordance with section 9.

#### **9. Minister may give directions to Director.**

- (1) The Minister may, from time to time, by written notice give to the Director directions of a general or specific nature to be observed with relation to —



- (a) the performance by the Agency of its functions or the exercise of its powers; or
  - (b) the exercise of the powers of the Director.
- (2) The Minister may from time to time, vary or replace any directions referred to in subsection (1).
- (3) The Minister shall, as soon as practicable after giving a direction in writing to the Director, cause a copy of the direction to be given to the Prime Minister and the Review Committee.
- (4) The Minister shall, in accordance with arrangements made between the Prime Minister and the Leader of the Opposition, make available to the Leader of the Opposition an unedited copy of any general or specific directions given under subsection (1).
- (5) The Leader of the Opposition shall treat as secret any directions made available to him pursuant to subsection (4).

## AGENTS AND EMPLOYEES OF AGENCY

### **10. Employment of agents and employees.**

- (1) Subject to this Act, the Director may as he considers necessary for the Agency to carry out its functions, employ such —
  - (a) agents of the Agency; and
  - (b) permanent or temporary employees of the Agency, under contractual agreement in writing.
- (2) The Director shall not employ a person as an agent except —
  - (a) in an office the designation and salary or salary range of which has been determined or is deemed to have been determined under section 12; and
  - (b) upon the terms and conditions of employment that are in force under section 12 in relation to the employment of persons as agents at the date on which that person is employed.

### **11. Designation of agents.**

- (1) The designation of agents in the Agency, other than the office of the Director shall be such as are determined from time to time by the Director.
- (2) The designation of an agent in the Agency immediately before the date of the commencement of this Act, and the salaries or salary ranges applicable to those agents immediately before the date of the commencement of this Act, shall be deemed to have been determined under section 15.

**12. Conditions of employment.**

- (1) Without prejudice to the provisions of Part V, holders of offices in the service of the Agency are not public officers for the purposes of the Constitution.
- (2) The terms and conditions of employment of an agent or employee, other than the Director, regarding matters of discipline and behaviour shall be administered by the Director or his delegate and subject as aforesaid be similar to those applicable to public service officers save as otherwise provided by the terms of employment.
- (3) The employment of any agent of the Agency shall not be terminated except in accordance with the terms or conditions of his employment agreement or contract.

**13. Publication of identity of employees.**

- (1) A person other than a member of the Review Committee, shall not, except with the consent in writing of the Prime Minister or of the Director, publish in any newspaper or other publication in daily circulation, by radio broadcast or television or otherwise make public, any photograph or matter stating, or from which it could be reasonably inferred, that a person having a particular name or otherwise identified, or a person residing at a particular address, is an officer, employee or agent (not including the Director) of the Agency or is in any way connected with such officer or employee or agent or is a former officer (not including a former Director), employee or agent of the Agency or is in any way connected with such a former officer, employee or agent.
- (2) A member of the Review Committee, shall not, except with the consent in writing of the Minister or the Director, make public or authorize the publication of, any information acquired by the person by reason of being such a member, from which it could reasonably be inferred that a person having a particular name or otherwise identified, or a person residing at a particular address is an officer (not including the Director), employee or agent or is in any way connected with such an officer, employee or agent or, is a former officer (not including a former Director), employee or agent of the Agency or is in any way connected with such a former officer, employee or agent.
- (3) A person who contravenes subsection (1) or (2), commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to a term of imprisonment not exceeding one year or to both.

**14. Protection of agents and employees.**

- (1) The Director, agents and other employees of the Agency shall be peace officers and shall in performing the duties and functions of the Agency



under this Act, have the same protection under the law as peace officers have in performing their duties and functions as peace officers.

- (2) If the Director is of the opinion that an agent or other employee may, on a particular occasion, have acted unlawfully in the purported performance of the duties and functions of the Agency under this Act, the Director shall cause to be submitted a report in respect thereof to the Director of Public Prosecutions.

## OVERSIGHT OF AGENCY

### 15. Establishment and functions of Review Committee.

There is to be a body known as the Intelligence and Security Committee of Parliament (hereinafter referred to as the “Review Committee”) which shall have responsibility for —

- (a) reviewing the administration and expenditure of the Agency;
- (b) reviewing generally, the performance by the Agency of its duties and functions;
- (c) reviewing the observance of any directions given by the Minister to the Director pursuant to section 9;
- (d) conducting any investigations in relation to complaints made to the Committee in accordance with section 19.

### 16. Appointment and eligibility of members to Review Committee.

- (1) The Review Committee shall be a joint committee of both Houses of Parliament and shall consist of seven members —
  - (a) five of whom are to be drawn from the members of the House of Assembly and two of whom are to be drawn from the Senate; and
  - (b) all of whom are to be appointed by the House of Parliament from which the member is to be drawn.
- (2) A person is not eligible to be a member of the Review Committee unless the person is nominated by the Prime Minister for membership or the Leader of the Opposition.
- (3) The Leader of the Opposition shall recommend to the Speaker the appointment of one member of the House and to the President of the Senate, one member of the Senate.
- (4) The Prime Minister shall recommend to the Speaker the appointment of three members of the House and two members of the Senate, from whose number, the Prime Minister shall recommend a Chair.
- (5) The provisions of the *Third Schedule* shall apply to the Review Committee.



**17. Powers of Review Committee.**

- (1) The Review Committee may consider any particular operational matter of the Agency but only so far as —
  - (a) the Review Committee and the Prime Minister are satisfied that the matter —
    - (i) is not part of any ongoing intelligence operation; and
    - (ii) is of significant national interest;
  - (b) the Prime Minister has requested the Review Committee to consider the matter; or
  - (c) the Review Committee's consideration of the matter is limited to the consideration of information provided voluntarily to the Review Committee (whether or not in response to a request by the Review Committee) by the Agency.
- (2) Any consideration of any matter by the Review Committee shall be conducted in private.

**18. Reports of Review Committee.**

- (1) The Review Committee must make an annual report to Parliament on the discharge of its functions and such other reports as it considers appropriate concerning any aspect of its functions.
- (2) Before making any report, the Review Committee must send it to the Prime Minister.
- (3) The Review Committee must exclude any such matter from any report if the Prime Minister, after consultation with the Review Committee, considers that the matter would be prejudicial to the continued discharge of the functions of the Agency.
- (4) Any report made by the Review Committee to Parliament must contain a statement as to whether any matter has been excluded pursuant to subsection (3).

## INVESTIGATION OF COMPLAINTS

**19. Complaints in relation to the Agency.**

- (1) Any person may make a complaint in writing to the Review Committee with respect to any act or thing done by the Agency and the Committee shall, subject to subsection (2), investigate the complaint if —
  - (a) the complainant has made a complaint to the Director with respect to that act or thing and the complainant has not received a response

within such period of time as the Committee considers reasonable or is dissatisfied with the response given; and

- (b) the Committee is satisfied that the complaint is not trivial, frivolous, vexatious or made in bad faith.
- (2) The Review Committee shall not investigate a complaint in respect of which the complainant is entitled to seek redress by means of a grievance procedure established under this or any other Act.

**20. Statement summarizing complaint.**

- (1) The Review Committee shall, as soon as practicable after receiving a complaint made under section 19(1), send to the complainant a statement summarizing such information available to the Committee as will enable the complainant to be as fully informed as possible of the circumstances giving rise to any alleged action of the Agency and the Review Committee shall send a copy of the statement to the Director.
- (2) A member of the Review Committee may exercise any of the powers or perform any of the functions of the Committee under this sub Part in relation to complaints.

**21. Investigation of complaints.**

- (1) Every investigation of a complaint by the Review Committee shall be conducted in private.
- (2) In the course of the investigation of a complaint, the complainant and the Director shall be given an opportunity to —
  - (a) make representations to the Committee;
  - (b) to present evidence and to be heard personally or by counsel,except that subject to the rules of natural justice where applicable, no one is entitled as of right to be present during, to have access to or to comment on representations made to the Committee by any other person.

**22. Powers of Committee in relation to complaints.**

The Review Committee has, in relation to the investigation of a complaint under this Part, power —

- (a) to summon and enforce the appearance of persons before the Committee and to compel them to give oral and written evidence on oath and to produce such documents and things as the Committee deems requisite to the full investigation and consideration of the complaint in the same manner and to the same extent as a court of record;
- (b) to administer oaths; and

- (c) to receive and accept such other evidence and information, whether by oath or by affidavit or otherwise, as the Committee sees fit, whether or not that evidence or information is or would be admissible in a court of law.

**23. Exclusion of evidence.**

Except in a prosecution of a person for an offence under Title XXVIII of the Penal Code (*Ch. 84*) in respect of a statement made under this Act, evidence given by a person in proceedings under this Part and evidence of the existence of the proceedings are inadmissible against that person in a court or in any other proceedings.

**24. Report on findings.**

- (1) The Review Committee shall —
  - (a) on completion of an investigation in relation to a complaint made under section 19, provide the Minister and the Director with a report containing the findings of the investigation and any recommendations that the Committee considers appropriate; and
  - (b) at the same time as or after a report is provided pursuant to paragraph (a) report the findings of the investigation to the complainant and may, if it thinks fit, report to the complainant any recommendations referred to in that paragraph.
- (2) The Minister may, in the public interest, authorise the publication of such report in full or partially redacted on the grounds of national security.

**PROTECTION FROM DISCLOSURE**

**25. Communication of intelligence.**

- (1) The communication of intelligence on behalf of the Agency shall be made only by the Director or by a person acting within the limits of authority conferred on the person by the Director.
- (2) If a person makes a communication of any information or matter that has come to the knowledge or into the possession of the person by reason of his being, or having been, an officer or employee of the Agency or his having entered into any contract, agreement or arrangement with the Agency, being information or matter that was acquired or prepared by or on behalf of the Agency in connection with its functions or relates to the performance by the Agency of its functions, other than a communication made —
  - (a) to the Director or an officer or employee of the Agency by —



- (i) an officer or employee of the Agency in the course of the duties of the officer or employee; or
    - (ii) a person who has entered into any such contract, agreement or arrangement in accordance with the contract, agreement or arrangement;
  - (b) by a person acting within the limits of authority conferred on the person by the Director;
  - (c) with the approval of the Director or of an officer of the Agency having the authority of the Director to give such an approval; or
  - (d) subject to section 26, to a person as required by any other law,
- the first mentioned person commits an offence and is liable on summary conviction to a fine not exceeding twenty-five thousand dollars or to imprisonment for a term not exceeding five years.
- (3) The first mentioned person referred to in subsection (1) may communicate information to a person referred to in subsection (4) if —
    - (a) the information has come into the possession of the Agency in the course of performing the Agency's functions; and
    - (b) either —
      - (i) the information relates, or appears to relate, to the commission, or intended commission, of a serious crime; or
      - (ii) the Director, or a person authorized for the purpose by the Director, is satisfied that the national interest requires the communication.
  - (4) The persons to whom information may be communicated under subsection (3) are —
    - (a) the National Security Council;
    - (b) the Director of Public Prosecutions;
    - (c) the Commissioner of Police; or
    - (d) a staff member for the purpose of carrying out his functions under this Act.
  - (5) The Director may cause a record in writing to be kept of the intelligence collected or communicated.

## **26. Prohibition on disclosure.**

- (1) For the purpose—
  - (a) of ensuring that the identity of human sources is kept confidential in order to protect life and security; and
  - (b) to encourage individuals to provide information to the Agency,

- subject to subsections (2) and (6), no person shall, in a proceeding before a court, person or body with jurisdiction to compel the production of information, disclose the identity of a human source or any information from which the identity of a human source could be inferred.
- (2) The identity of a human source or information from which that identity could be inferred may be disclosed in a proceeding referred to in subsection (1) if the human source and the Director consent to the disclosure of the information.
  - (3) A party to any proceeding referred to in subsection (1) may apply to a judge for one of the following orders if relevant to the proceeding —
    - (a) an order declaring that an individual is not a human source or that information is not information from which the identity of a human source could be inferred; or
    - (b) if the proceeding is a prosecution of an offence, an order declaring that the disclosure of the identity of a human source or information from which the identity of a human source could be inferred is essential to establish the innocence of the accused and that it may be disclosed in the proceeding.
  - (4) An applicant under subsection (3) shall after filing the application forthwith serve a copy of the application and the affidavit in support thereof upon the Attorney-General.
  - (5) The hearing of the application shall be held in chambers, unless the judge orders otherwise.
  - (6) If the judge grants an application under subsection (3)(b), the order may be made subject to such conditions as the judge considers appropriate but it shall not take effect until the time provided for an appeal from such order has expired or all rights of appeal have been exhausted.
  - (7) The judge shall ensure the confidentiality of the following—
    - (a) the identity of any human source and any information from which that identity may be inferred; and
    - (b) information and other evidence provided in respect of the application, if in the judge's opinion, its disclosure would be injurious to national security.
  - (8) For the purposes of this section, the expression "**human source**" means an individual who, after having received a promise of confidentiality, has provided, provides or is likely to provide information to the Agency.

## **PART IV – GENERAL POWERS OF SEARCH AND SEIZURE**

### **27. Request for information from operators of aircraft or vessel.**

- (1) For the purposes of carrying out the functions of the Agency, an agent or other employee authorized in writing by the Director (herein referred to as an authorized officer) may —
  - (a) ask an operator of an aircraft or vessel questions relating to the aircraft or vessel, or its cargo, crew, passengers, stores or voyage; or
  - (b) request an operator of an aircraft or vessel to produce documents relating to the aircraft or vessel, cargo, crew, passengers, stores or voyage, that are in the possession or under the control of the operator.
- (2) A person who is questioned or is requested to produce a document under subsection (1) must answer the question or produce the document as soon as practicable.
- (3) A person who operates an aircraft or vessel and—
  - (a) refuses to answer a question asked by an authorized officer as referred to in subsection (1)(a);
  - (b) refuses to comply with a request by an authorized officer as referred, as referred to in subsection (1)(a); or
  - (c) in response to a question or request as referred to in subsection (1) gives a false or misleading answer or document,commits an offence and is punishable on summary conviction to a fine not exceeding five thousand dollars or to a term of imprisonment not exceeding five years or to both.
- (4) It is a defence to a prosecution for an offence under subsection (3) if the person charged had a reasonable excuse for failing to answer the question; or produce the document.

### **28. Search warrants.**

- (1) Subject to section 30, the Director, or any person authorized by the Director, may apply to a Magistrate for a search warrant which shall be addressed to each and all agents and all such agents shall have the right, power and authority to execute every such warrant.
- (2) The Magistrate may issue the warrant if he is satisfied by evidence on oath that there are reasonable grounds for believing that access by the Agency to records or other things in any place or places will substantially



assist the collection of intelligence in accordance with this Act in respect of any threat to the security of The Bahamas.

- (3) The warrant shall be signed by the Magistrate and shall authorize the Agency to do specified things, subject to any restrictions or conditions specified in the warrant, in relation to the particular place or places, which must also be specified in the warrant.
- (4) The things that may be specified in the warrant, are any of the following that the Magistrate considers appropriate in the circumstances —
  - (a) entering a particular place or places;
  - (b) searching the said place or places for the purpose of finding records or other things relevant to such security threat and, for that purpose, opening any safe, box, drawer, parcel or other container in which there is reasonable cause to believe that any such records, electronic device of any nature or other things may be found;
  - (c) inspecting or otherwise examining any record, electronic device or other thing so found, and making copies or transcripts of any data or record stored on any electronic device or any other thing that appears to be relevant to the collection of intelligence by the Agency in accordance with this Act;
  - (d) removing and retaining any record or other thing so found, for the purposes of —
    - (i) inspecting or examining it; and
    - (ii) in the case of a record making copies in accordance with the warrant;
  - (e) authority to use any force as is necessary and reasonable to achieve the objectives of the warrant;
  - (f) any other thing reasonably incidental to any of the above.
- (5) For the purposes of this section, “**place**” shall include any building, mode of transport, box, receptacle or locality whatsoever in any part of The Bahamas as may be specified in any search warrant.

## **29. Seizure of postal articles.**

- (1) Subject to subsection (2) and to section 30, the Agency shall have power to seize postal articles posted by or on behalf of, addressed to or intended to be received by, that person, while the articles are in the course of the post, in order to assist the Agency in carrying out its function of obtaining intelligence relevant to security.
- (2) A judge may by warrant obtained in the manner provided by section 30 authorize the Agency to open the article and inspect and make copies of the contents of any such article.

**30. Interception of communications.**

- (1) When necessary for the carrying out by the Agency of its functions the Director believes on reasonable grounds that a warrant under this section is required to enable the Agency —
  - (a) to investigate within or outside The Bahamas a threat to the interests of defence, public safety, public order, public morality, public health; or
  - (b) to discharge the international obligations of The Bahamas,the Director may request the Attorney-General to cause an application to be made under the Interception of Communications Act, 2017 for the appropriate warrant.
- (2) The judge may issue a warrant under his hand if he is satisfied that —
  - (a) a person is engaged in or is reasonably suspected by the Director of being engaged in or of being likely to engage in any action which is a threat to the security of The Bahamas;
  - (b) access by the Agency to articles sent by or on behalf of, addressed to or intended to be received by such person while the articles are being delivered by a delivery service provider, will, or is likely to assist the Agency in carrying out its function of obtaining intelligence relevant to security;
  - (c) the articles have been sent by or on behalf of such person or the articles are intended to be received by the subject; and
  - (d) the articles are intended to be received by such person who shall be specified in the warrant, or are reasonably suspected, by a person authorized to exercise the authority of the Agency under warrant.

**31. Discontinuing action before warrants expire.**

If, before a warrant issued pursuant to this Act ceases to be in force, the Director is satisfied that the grounds on which the warrant was issued have ceased to exist, the Director shall take such steps as are necessary to ensure that action under the warrant is discontinued.

**32. Renewal of expired warrant.**

If, a warrant issued pursuant to this Act ceases to be in force, the Director may if he is satisfied that there are reasons for so doing, make application to a Stipendiary Magistrate for the issuance of a new warrant.

**33. Certain records obtained under warrant to be destroyed.**

- (1) Information obtained in the performance of the duties and functions of the Agency under this Act shall not be disclosed except in accordance with this section.



- (2) The Agency may disclose information referred to in subsection (1) for the purposes of the performance of its duties and functions under this Act or the administration or enforcement of this Act or as required by any other law and may also disclose such information —
  - (a) where the information may be used in the investigation or prosecution of an alleged contravention of any law to a peace officer and to the Director of Public Prosecutions;
  - (b) where the information relates to the conduct of the international affairs of The Bahamas or is relevant to the defence of The Bahamas or to the National Security Council.
- (3) It shall be an offence for a person, other than in the carrying out of his duties or functions under this Act, to disclose —
  - (a) the fact that a warrant has been applied for or issued under this Act;
  - (b) any information relating to the content of such warrant;
  - (c) the questioning or detention of a person in custody in consequence of the execution of a warrant.
- (4) A person who contravenes the provisions of subsection (1) or (3) commits an offence punishable on summary conviction to a fine not exceeding fifteen thousand dollars or to a term of imprisonment not exceeding five years or to both.
- (5) It shall only be an offence under subsection (3) if the disclosure made contrary to that subsection relates to an on going investigation of the Agency and a certificate issued under the hand of the Director that an investigation is such shall be admissible as conclusive evidence of that fact.

**34. Offences relating to disclosure of warrants.**

- (1) A person (the discloser) commits an offence if —
  - (a) a warrant has been issued under this Act; and
  - (b) the discloser discloses information; and
  - (c) either of the following apply —
    - (i) the information indicates the fact that the warrant has been issued or a fact relating to the content of the warrant or to the questioning or detention of a person in connection with the warrant;
    - (ii) the information is operational information; and
  - (d) the disclosure occurs before the execution of the warrant; and
  - (e) the disclosure is not a permitted disclosure,



and on summary conviction shall be liable to a fine not exceeding seven thousand dollars or to a term of imprisonment not exceeding five years or to both.

- (2) A person (the discloser) commits an offence if —
- (a) a warrant has been issued under this Act; and
  - (b) the discloser discloses information; and
  - (c) the information is operational information; and
  - (d) the discloser has the information as a direct or indirect result of —
    - (i) the issue of the warrant; or
    - (ii) the doing of anything authorised by the warrant,

and on summary conviction shall be liable to a fine not exceeding seven thousand dollars or to a term of imprisonment not exceeding five years or to both.

- (3) In this section —

**“operational information”** means information indicating one or more of the following —

- (a) information that the Agency has or had;
- (b) a source of information (other than the person specified in the warrant mentioned in subsection (1) or (2)) that the Agency has or had;
- (c) an operational capability, method or plan of the Agency;

**“permitted disclosure”** means any disclosure made by a person in the course of any of the following —

- (a) exercising a power, or performing a function or duty, under this Act;
- (b) doing anything the person is authorised to do by a warrant issued under this Act;
- (c) doing anything the person is required or permitted to do by a direction under this Act.

### 35. Secrecy.

- (1) Subject to section 25, a person who is or has been a member or an agent of the Agency shall not, either directly or indirectly, except for the purpose of this Act —
- (a) make a record or divulge or communicate to any person, any information acquired by him by reason of his office or employment under or for the purpose of this Act; or
  - (b) produce to any person a document furnished for the purpose of this Act.

- (2) A person who is or has been a member or an agent of the Agency shall not be required to produce in court any document of which the person has custody, or to which the person has access, by virtue of his office or employment under or for the purpose of this Act, or to divulge or communicate to a court any information obtained by him by reason of such an office or employment, except when it is necessary to do so for the purpose of this Act.

## PART V – TRANSFER AND PENSION BENEFITS

### 36. Transfer of pensionable office holder.

- (1) Upon the commencement of this Act, where a person holding a pensionable office within the meaning of the Pensions Act (*Ch. 43*) (hereinafter referred to as a pensionable officer) is desirous of being transferred from the public service under the Government to the service of the Agency for a period extending from that date to the date the officer accepts permanent employment with the Agency under the provisions of section 40 or for a period of one year from the date of commencement, whichever is the shorter, such person shall make application to the Director.
- (2) Nothing in subsection (1) shall be deemed to preclude an officer, transferred to the service of the Agency under subsection (1), from applying at any time during such period as aforesaid, for a transfer to service under the Government in accordance with the terms and conditions of service attached to the appointment held by such officer at the commencement of this Act and, on such application being made, the same consideration shall be given thereto as if the applicant had continued to be in the service under the Government.
- (3) During such period as aforesaid every such officer shall be so employed by the Agency that his remuneration and conditions of service are not less favourable than those which are attached to the appointment under the Government held by such officer at the commencement of this Act or which would have become attached to such appointment, during such period as aforesaid, had such officer continued in service under the Government but, for the purposes of pension and gratuity, such period of service with the Agency shall be deemed to be service under the Government; and the Agency shall pay to the Government such contributions in respect of the cost of pensions earned by such officer during such period as aforesaid as may be determined by the Treasurer.



**37. Offer of permanent employment to pensionable office holder.**

- (1) Within the period of one year mentioned in section 39, the Agency may offer to any pensionable officer referred to in that section permanent employment with the Agency at a remuneration and subject to section 12 on terms and conditions no less favourable than those which were enjoyed by him in relation to his public service immediately before the date of commencement of this Act or to which he would have become entitled to in respect of such service during the aforementioned period, had he continued in that service.
- (2) Every pensionable officer who accepts permanent employment with the Agency offered to him under subsection (1) shall, for all purposes be deemed to have ceased to be in the service under the Government and to have entered into service with the Agency on the date of his acceptance.
- (3) Every pensionable officer who —
  - (a) having been offered permanent employment with the Agency under subsection (1), refuses to accept such employment; or
  - (b) has not been offered permanent employment with the Agency under subsection (1),

may at the expiration of the one year period referred to in section 39 be transferred from the service of the Agency back to the service under the Government.

**38. Pension scheme.**

- (1) The Agency shall establish a pension scheme for the payment of pensions and gratuities to officers and servants of the Agency who retire from the employment of the Agency.
- (2) Except as provided in any contract of employment, the Agency may grant to any employee in respect of service with the Agency, pensions, gratuities and other like allowance payable from the pension scheme, which shall be no less than the rate prescribed by and in accordance with the provisions of the Pensions Act.

**39. Pension of officers transferred to Agency.**

- (1) Where any—
  - (a) officer holding a pensionable office in the Royal Bahamas Police Force; or
  - (b) officer holding a pensionable office in The Royal Bahamas Defence Force; or
  - (c) public officer holding a pensionable office under the Government of The Bahamas,



ceases to be the holder of any of the aforementioned offices by reason of his transfer with his consent to the Agency and that person subsequently retires from the service in the Royal Bahamas Police Force or The Royal Bahamas Defence Force or the public service of the Government of The Bahamas in such circumstances that, had he remained a police officer, officer of The Royal Bahamas Defence Force or public officer, he would have been eligible for pension under the Police Force Act (*No. 3 of 2009*) or the Defence Act (*Ch. 211*) or the Pensions Act (*Ch. 43*), then in any such case subsections (2) and (3) shall have effect.

- (2) A pension payable to any person mentioned in subsection (1) by the Agency to whose service he has been transferred shall be calculated and granted to him in respect of his total service in The Royal Bahamas Police Force or The Royal Bahamas Defence Force or the public service of the Government of The Bahamas, and with the Agency taken together and such service shall be reckoned as continuous for pension purposes.
- (3) There shall be payable out of the Consolidated Fund upon the warrant of the Minister of Finance to the Agency a contribution to every pension paid in accordance with subsection (2), such amounts as would have been payable to the persons concerned by way of pension under the Police Force Act (*No. 3 of 2009*) or the Defence Act (*Ch. 211*) or the Pensions Act (*Ch. 43*), if that person had retired from the Police Force or The Royal Bahamas Defence Force or the public service of the Government of The Bahamas and if he has been granted a pension under the Police Force Act (*No. 3 of 2009*) or the Defence Act (*Ch. 211*) or the Pensions Act (*Ch. 43*), upon the date of his ceasing to be a police officer or officer of The Royal Bahamas Defence Force or a public officer.

## PART VI – MISCELLANEOUS

### 40. Periodic reports.

- (1) The Director shall submit to the Minister a written report —
  - (a) on the final working day of the month of January in each and every year, on the activities of the Agency during the twelve month period ending 31<sup>st</sup> December of the preceding year; and
  - (b) for each warrant issued pursuant to this Act, on the extent to which the action taken under the warrant has assisted the Agency in carrying out its functions; and
  - (c) without prejudice to the foregoing any other report on such activities for any period specified in any directives issued by the Minister, who shall cause the Review committee to be given a copy of each such report.

- (2) The Review Committee shall, commencing in the year 2018 and not later than 31<sup>st</sup> March of that year and in each succeeding year, submit to the Minister a written report of the activities of the Committee during the preceding year save that the Minister may by Notice in the Gazette appoint for any year another date.
- (3) Upon receipt of a report under subsection (2), the Minister shall cause it to be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the day the Minister receives the report.
- (4) The Review Committee before making available under section 24(b) a copy of a report of any of its findings or recommendations to a complainant shall in order to ensure compliance with the requirements of secrecy under this Act consult with the Director.

#### **41. Regulations.**

- (1) The Minister after consultation with the Director, may make regulations not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed or that are necessary or convenient to be prescribed for the carrying out or giving effect to any provision of this Act.
- (2) The regulations may also make provision for —
  - (a) the employment of officers otherwise than under contractual agreements in writing and may in respect of officers so employed, make provision from time to time for their terms, conditions of employment inclusive of salaries;
  - (b) the terms and conditions of employment applicable to temporary and casual employees.
- (3) Regulations made under this section shall be subject to an affirmative resolution of both Houses of Parliament.

#### **FIRST SCHEDULE** (sections 6(1) and 31(1))

1. An offence contrary to the Anti-Terrorism Act
2. An offence contrary to the Proceeds of Crime Act
3. Hostage taking
4. Child Abduction
5. Human Trafficking
6. Genocide
7. Hijacking

8. Possession or use of weapons of mass destruction
9. Corruption
10. Cybercrime
11. Smuggling of firearms or dangerous drugs
12. Pornographic information or data of children or exploited persons
13. Conspiracy to commit any of the offences listed above

## SECOND SCHEDULE

(section 7(3))

### 1. Term of office and remuneration of Director.

- (1) Subject to subparagraph (2) and paragraph 4, the Director shall be appointed to hold office for such term, not exceeding five years, as set out in his instrument of appointment.
- (2) Without prejudice to subparagraph (1) the Director is eligible on the expiration of a first or any subsequent term of office to be re-appointed for a further term not exceeding five years.
- (3) The Director shall be paid such remuneration and allowances as are specified in writing by the Governor-General.

### 2. Appointment of Acting Director.

- (1) The Governor-General may appoint a person to act as Director —
  - (a) during a vacancy in the office of Director; or
  - (b) during any period, or during all periods, when the Director is absent from duty or from The Bahamas or is, for any reason, unable to perform the functions of his office,but a person appointed to act during a vacancy shall not continue to act for more than twelve months.
- (2) Before a recommendation is made to the Governor-General for the appointment of a person under subparagraph (1) to act as Director, the Prime Minister shall consult in the manner mentioned in section 7(2).
- (3) An appointment of a person under subparagraph (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.
- (4) The Governor-General may—



- (a) determine the terms and conditions of appointment, including remuneration and allowances, of a person acting as Director; and
    - (b) at any time terminate such an appointment.
  - (5) Where a person is acting as Director in accordance with subparagraph (1) (b) and the office of Director becomes vacant while that person is so acting, that person may continue to act until the Minister otherwise directs, the vacancy is filled or a period of twelve months from the date on which the vacancy occurred expires, whichever first happens.
  - (6) The appointment of a person to act as Director ceases to have effect if the person resigns the appointment in writing, signed by the person and delivered to the Governor-General.
  - (7) While a person is acting as Director, he has and may exercise, all the powers and shall perform all the functions of the Director.
- 3. Delegation powers of Director.**
- (1) The Director, with the approval of the Minister, may in writing, either generally or as otherwise provided by the instrument of delegation, delegate to an agent of the Agency all or any of the powers of the Director that relate to the management of the staff of the Agency.
  - (2) Any power delegated under subparagraph (1) when exercised by the delegate, shall, for the purposes of this Act and the regulations, be deemed to have been exercised by the Director.
  - (3) A delegation under this section does not prevent the exercise of a power by the Director.
- 4. Resignation or termination of Director.**
- (1) The Director may resign from office in writing, signed and delivered to the Governor-General.
  - (2) The Governor-General may terminate the appointment of the Director by reason of physical or mental incapacity, for gross negligence or misconduct or where the Director becomes bankrupt.

### **THIRD SCHEDULE**

#### **(Section 16(5))**

#### **INTELLIGENCE AND SECURITY COMMITTEE OF PARLIAMENT**

##### **1. Tenure of office.**

- (1) Subject as follows, a person appointed as a member of the Review Committee during a Parliament holds office for the duration of that Parliament.
- (2) A member of the Review Committee vacates office if —
  - (a) the person ceases to be a member of the House of Parliament by virtue of which the person is a member of the Review Committee;
  - (b) the person becomes a Minister of the Crown; or
  - (c) a resolution for the person's removal is passed in the House of Parliament by virtue of which the person is a member of the Review Committee.
- (3) A member of the Review Committee may resign at any time by notice given to—
  - (a) the Chair of the Review Committee; or
  - (b) in the case of the member who is the Chair of the Review Committee, the Speaker or the President, as in the case may be, of the House of Parliament by virtue of which the person is a member of the Review Committee.
- (4) A person who ceases to be a member of the Review Committee is eligible for reappointment.
- (5) Subparagraph (2) does not affect the validity of anything done between the occurrence of a vacancy and the vacancy being filled.
- (6) Anything which, immediately before the end of a Parliament, is in the process of being done or omitted to be done by or in relation to the Review Committee may be continued by or in relation to the Review Committee in the new Parliament.
- (7) Anything done or omitted to be done by or in relation to the Review Committee in a Parliament (or treated as so done or omitted) is, if in force or effective immediately before the end of that Parliament, to have effect as if done or omitted by or in relation to the Review Committee in the new Parliament so far as that is required for continuing its effect in that Parliament.

**2. Procedure.**

- (1) The Review Committee may determine its own procedure; but this is subject to subparagraphs (2) to (5).
- (2) If on any matter there is an equality of voting among the members of the Review Committee, the Chair of the Review Committee has a second or casting vote.

- (3) The Chair of the Review Committee may appoint another member of the Review Committee to act, in the Chair's absence, as the chair of the Review Committee at any meeting of it.
- (4) A person appointed under subparagraph (3) does not enjoy the right conferred on the Chair of the Review Committee by subparagraph (2).
- (5) The quorum of the Review Committee is four.
- (6) The Review Committee may take evidence on oath, and for that purpose may administer oaths.

**3. Access to information.**

- (1) This paragraph applies to information requested by the Review Committee in the exercise of its functions that—
  - (a) does not relate to any particular operational matter, or
  - (b) relates to a particular operational matter that the Review Committee is considering under section 17(a) or (b).
- (2) If the Director or other head of a law enforcement agency is asked by the Review Committee to disclose the information, then, as to the whole or any part of the information which is sought, that person must either—
  - (a) arrange for it to be made available to the Review Committee subject to and in accordance with a memorandum of understanding under between the Review Committee and the Director, as the case may be; or
  - (b) inform the Review Committee that the information cannot be disclosed because the Minister has decided that it should not be disclosed.
- (3) If the Review Committee asks a government department or any part of a government department to disclose the information, then, as to the whole or any part of the information which is sought, the relevant Minister of the Crown must either—
  - (a) arrange for it to be made available to the Review Committee subject to and in accordance with a memorandum of understanding between the Review Committee and the head of the respective department, or
  - (b) inform the Review Committee that the information cannot be disclosed because the Prime Minister has decided that it should not be disclosed.
- (4) The Minister or the Prime Minister may decide under subparagraph (2)(b) or (3)(b) as the case may be, that information should not be disclosed only if he considers that—
  - (a) it is—



- (i) sensitive information (as defined in paragraph 4), and
    - (ii) information which, in the interests of national security, should not be disclosed to the Review Committee; or
  - (b) it is information of such a nature that, if the authority were requested to produce it before a Select Committee of the House of Assembly, the Minister or the Prime Minister, as the case may be would consider (on grounds which were not limited to national security) it proper not to do so.
- (5) The disclosure of information to the Review Committee in accordance with subparagraph (2) is to be regarded for the purposes of this Act or any other law as necessary for the proper discharge of the functions of the Intelligence Service.
- (6) In this paragraph “relevant Minister of the Crown”, in relation to a request for information, means—
- (a) such Minister of the Crown as is assigned the responsibility for the respective department or subject; or
  - (b) if no Minister of the Crown is so identified, any Minister of the Crown.

**4. Sensitive information.**

The following information is sensitive information for the purposes of paragraph 3(4)(a)—

- (a) information which might lead to the identification of, or provide details of, sources of information, other assistance or operational methods available to—
  - (i) the National Intelligence Agency; or
  - (ii) other law enforcement agency;
- (b) information about particular operations which have been, are being or are proposed to be undertaken in pursuance of any of the functions of the persons mentioned in subparagraph (a);
- (c) information provided by, or by an agency of, the Government of a country where that Government does not consent to the disclosure of the information.

**5. Publication of information received in private.**

- (1) This paragraph applies to information received by the Review Committee in private in connection with the exercise of its functions.
- (2) The Review Committee—
  - (a) may only publish the information by way of a report under section 18; and

- (b) must not otherwise disclose the information to any person if the Review Committee considers that there is a risk that the person will publish it.
- (3) The restrictions on publication and disclosure of information in subparagraph (2) do not apply if—
  - (a) the Review Committee and the Minister or Prime Minister, as the case may be, are satisfied that the publication or disclosure would not be prejudicial to the continued discharge of the functions of the National Intelligence Agency or the intelligence service of any other law enforcement agency;
  - (b) publication or disclosure is necessary for the Review Committee to comply with any enactment or rule of law; or
  - (c) the information has on an earlier occasion been disclosed to the public, in circumstances which do not contravene —
    - (i) subparagraph (2); or
    - (ii) any other enactment or rule of law prohibiting or restricting the disclosure of information.

**6. Protection for witnesses.**

Evidence given by a person who is a witness before the Review Committee may not be used against the person in —

- (a) any civil or disciplinary proceedings; or
- (b) any criminal proceedings,

unless the evidence was given in bad faith.

## OBJECTS AND REASONS

The Bill proposes legislation to establish an agency of the Government of The Bahamas that is seized with the responsibility of gathering intelligence that impacts the security of The Bahamas.

Clauses 1 and 2 in Part I of the Bill provide for the short title of the legislation that would come into operation on a date to be appointed by the Minister responsible for National Security (the Minister) and for the meanings of the several terms used in the legislation.

Clauses 3 of the Bill provides for the objectives of the Act which are to establish a body to —

- (a) coordinate intelligence gathering and joint strategic planning among the various law enforcement agencies and government departments so as to ensure a more effective campaign against crime;
- (b) collect by investigation or otherwise, information and intelligence respecting activities that may on reasonable grounds be suspected of constituting threats to the security of The Bahamas.

Part II of the Bill sets out clauses 4 to 6. Clause 4 of the Bill seeks to establish the Agency which shall be under the control of the Director. Clause 5 of the Bill provides for the functions of the Agency and clause 6 of the Bill provides for the powers of the Agency.

Part III of the Bill sets out clauses 7 to 26. Of these clauses 7 to 9 are concerned firstly with the appointment on specific terms of a person as Director by the Governor-General acting on the advice of the Prime Minister after consultation with the Leader of the Opposition. One such term is that the Director would not, on appointment, hold office for a period exceeding five years though remaining eligible for reappointment and would in the carrying out of duties as Director be subject to general or specific directions given by the Minister.

Secondly, clauses 10 to 14 make provision for the engagement of other persons as agents and other persons as agents.

Clause 15 - 24 of the Bill establishes an independent body to review and report in due course to Parliament on the activities of the Agency and to receive and investigate complaints against the Agency. It also provides for the appointment and eligibility of members of the Review Committee, and the powers of the Review Committees. It also sets out the manner of making to and the investigation by the Review Committee of complaints against the Agency.

Clauses 25 of the Bill makes provision for communication of intelligence on behalf of the Agency which should be made only by the Director or a person acting within the limits of authority conferred on that person by the Director. Clause 26 of the Bill prohibits disclosure of information to ensure that the identity of human resources is kept confidential.



Clauses 27 to 35 in Part IV of the Bill make provision for the general powers of inquiry, search, arrest and seizure.

Part V relate to the transfer and provision of superannuation benefits of the employees of the Agency who were previously in the public service.

Part VI mandates that reports are to be furnished by the Director and the Review Committee and which reports would in due course be laid before Parliament which also would have to approve any regulations made by the Minister as provided in clause 41.