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TABLE OF CONTENTS **PAGE**

FIRST SUPPLEMENT

LEGAL SUPPLEMENT

A. **ACTS — NIL**

B. **SUBSIDIARY LEGISLATION — NIL**

C. **BILLS —** BILL No. 5 of 2023 – The National Intelligence and Security Agency Act 2023. … … … 51

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THE OFFICIAL GAZETTE 17TH APRIL, 2023
LEGAL SUPPLEMENT – C

BILL No. 5 of 2023

Monday 17th April, 2023

PARLIAMENT OFFICE
Public Buildings,
Georgetown,
Guyana.

17th April, 2023

The following Bill which will be introduced in the National Assembly is published for general information.

S.E. Isaacs,
Clerk of the National Assembly.

GUYANA

BILL No. 5 of 2023

NATIONAL INTELLIGENCE AND SECURITY AGENCY BILL 2023

ARRANGEMENT OF SECTIONS

SECTION

PART I

PRELIMINARY

1. Short title.
2. Interpretation.

PART II

NATIONAL INTELLIGENCE AND SECURITY AGENCY

3. Establishment of the National Intelligence and Security Agency.
4. Functions of the Agency.
5. General and special directions of the President.

PART III
ADMINISTRATION OF THE AGENCY

6. Director of the Agency
7. Deputy Director of the Agency
8. Qualifications of Director and Deputy Director.
9. Terms and conditions of appointment of Director and Deputy Director.
10. Removal from office.
11. Resignation and vacancy.
12. Assistant Directors.
13. Other officers and employees of the Agency.
14. Superannuation benefits.
15. Obligation to secrecy.
16. Oath of office and secrecy.
17. Funds of the Agency.
18. Accounts and audit.
19. Financial year.

PART IV
OPERATIONAL POWERS OF THE AGENCY

20. Operational powers of the Director.
21. Police and defence force powers to discharge functions.
22. Undercover intelligence support.
23. Interception of communications.
24. Public body to provide information on request.
25. Access to information.
26. Keeping the Agency informed.
27. Coordination of intelligence programmes and operations.
28. Mutual cooperation.
29. Power to engage foreign agencies.
30. Intelligence support in the prevention or detection of crime.
31. Protection for institutions and facilities.
32. Officers to embassies abroad.
33. Protection of officers.
34. Issue of arms and ammunition.
35. Security of intelligence.
36. Delegation.

PART V
COMPLAINTS

37. Complaints.
38. Intelligence and Security Committee
39. Functions of Committee.

PART VI
MISCELLANEOUS

40. Obstruction of or interference with officers of the Agency in discharge of functions.
41. Immunity from suit.
42. Removal of Difficulties.
43. Regulations.
44. Transitional provisions.
45. Consequential amendments.
First Schedule – Oath of Office and Secrecy (for Directors and other officers)
Second Schedule – Oath of Office and Secrecy (for Administrative staff)

A BILL
Intituled

An Act to establish the body known as the National Intelligence and Security Agency as the Agency to further enhance the State's defence and security policy stated in article 197A of the Constitution, to provide for the Agency to be responsible for the coordination of the State's defence and law enforcement activities relating to national intelligence and security, and to provide national intelligence and security advice to the President, Cabinet and entities in the security sector, and for connected matters.

A.D. 2023 Enacted by the Parliament of Guyana:-

PART I

PRELIMINARY

Short title.

1. This Act may be cited as the National Intelligence and Security Agency Act 2023.

Interpretation.

2. In this Act –

"Agency" means the National Intelligence and Security Agency established under section 3;

"Chief-of-Staff" means the Chief-of-Staff of the Guyana Defence Force;

"Committee" means the Intelligence and Security Committee established under section 38;

"Director" means the Director of the Agency appointed under section 6;

"information" means any material in any form, including electronic or digital form, including records, documents, memoranda, electronic mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models and data material;

"entities in the security sector" means the –

(a) Guyana Police Force, established under the Police Act; Cap. 16:01

(b) Guyana Defence Force, established under the Defence Force Act; Cap. 15:01

(c) Guyana Prison Service, established under the Prison Act; Cap. 11:01

(d) Guyana Fire Service, established under the Fire Service Act; Cap. 22:02

(e) Revenue Authority, established under the Revenue Authority Act; Cap. 79 :04

(f) Customs Anti-Narcotic Unit, referred to in the Narcotic Drugs and Psychotropic Substances (Control) Act; Cap. 10:10

(g) Financial Intelligence Unit, established under the Anti- Money Laundering and Countering the Financing of Terrorism Act 2009; and No. 13 of 2009

(h) any other national entity established by law with functions relating to national security;

"Minister" means the Minister assigned responsibility for defence and national security;

"national intelligence estimate" means a comprehensive analysis of information of national security interest that informs on the adequacy, capabilities and vulnerabilities of national security threats to Guyana;

"national security interest" includes information or events that have the potential to influence any sector within Guyana;

"national security threat" includes any threat that has the potential to disrupt the stability of any sector within Guyana;

"public body" means –

(a) a Ministry or a department or division of a Ministry;

(b) Local Democratic Organs established under the Municipal and District Councils Act, Local Government Act, Local Democratic Organs Act;

Cap. 28 :01
Cap. 28 :02
Cap. 28 :09

(c) a Regional Health Authority established under the Regional Health Authorities Act;

Cap. 32 :06

(d) a statutory body, responsibility for which is assigned to a Minister;

(e) a company incorporated under the Companies Act which is owned and controlled by the State;

Cap. 89:01

(f) a Constitutional Commission or any other Commission established by law;

(g) a body corporate or an unincorporated entity –

(i) in relation to any function which it exercises on behalf of the State;

(ii) which is established by or on behalf of the State; or

(iii) which is supported, directly or indirectly, by Government funds and over which Government exercises control; or

(h) any other body prescribed by the Minister by order; and

"sector" means a well-defined sphere of national importance that provides a service and includes service in the security, economic, social and health sectors.

PART II

NATIONAL INTELLIGENCE AND SECURITY AGENCY

Establishment of the National Intelligence and Security Agency.

3. (1) The body known as the National Intelligence and Security Agency is established as an Agency to further enhance the State's defence and security policy.

(2) The Agency shall be the national institution responsible for the coordination of the State's defence and law enforcement activities relating to national intelligence and security.

(3) The composition of the Agency shall be in accordance with the provisions of Part III.

Functions of the Agency.

4. (1) Subject to subsection (2), the functions of the Agency shall be to –

(a) collect information of national intelligence and security interest that provides a basis for decision making and preventive actions;

(b) gather, store, process, analyse and disseminate information that is relevant to national intelligence and security;

(c) conduct analysis of information of national intelligence and security interest;

(d) provide a modern central platform for the collection of relevant information from diverse sources;

(e) maintain a national database of information of national intelligence and security;

(f) conduct relevant research to enhance efficiency in information management and all matters relating to national intelligence and security;

(g) provide national intelligence estimates and intelligence and security advice to the President, Cabinet and, on the President's direction where necessary, to Ministers, entities in the security sector and other national stakeholders; and

(h) provide support to investigations of matters pertaining to threats to national intelligence and security.

(2) The functions of the Agency shall be exercisable only –

(a) in the interests of national intelligence and security, with particular reference to –

(i) the defence and foreign policies of the State;

(ii) protection against threats from espionage, terrorism and sabotage, from the activities of persons within Guyana or agents of foreign powers; and

(iii) protection from actions of persons within Guyana or agents of foreign powers intended to undermine democracy and State institutions;

(b) in the interests of the economic well-being of Guyana; and

(c) in support of other entities in the security sector and other national stakeholders, in the prevention or detection of crime.

General and special directions of the President.

5. The President may, after consultation with the Minister or any other person the President considers appropriate, including the Director, Chief-of-Staff or Commissioner of Police, give to the Director directions of a general or specific character as to the policy to be followed by the Agency in the exercise of its functions as appear to the President to be necessary for national intelligence, security and the public interest, and the Director shall give effect to those directions.

PART III

ADMINISTRATION OF THE AGENCY

Director of the Agency.

6. (1) Subject to section 44(1)(a), the President shall appoint as Director to head the Agency an officer of the Guyana Defence Force or the Guyana Police Force or a civilian.

(2) The Director's official standing shall be equivalent to a position not less than a Chief-of-Staff or Commissioner of Police.

(3) The Director shall have the authority, direction and control over the Agency, subject only to the President.

(4) The Director shall, subject to the requirement of legal advice, be the principal adviser to the President on the provisions of this Act.

(5) The Director shall direct training of officers of the Agency and other activities of the Agency in keeping with the strategic and personnel career objectives of the Agency.

(6) The Director shall report to the President or a person designated by the President.

Deputy Director.

7. (1) Subject to section 44(1)(b), the Deputy Director shall be appointed by the President.

(2) The Deputy Director shall assist the Director in the discharge of the functions of the Agency and may during the absence or incapacity of the Director, or when so authorised by the Director, do any act or thing which may by law be done by the Director.

Qualifications of Director and Deputy Director.

8. The qualifications of the Director and Deputy Director shall be a minimum of a first degree (or of an equivalent level) from a

recognised university in the field or related field of intelligence, counter intelligence, security and defence, or strategic studies.

Terms and conditions of appointment of Director and Deputy Director.

9. (1) The appointments of the Director and Deputy Director shall be for a period of not less than three years and not more than five years as determined by the President.

(2) The Director and Deputy Director shall be eligible for reappointment.

(3) The remuneration and other terms and conditions of appointment of a Director shall be determined by the President.

(4) The remuneration and other terms and conditions of appointment of the Deputy Director shall be determined by the Director in consultation with the President or a person designated by the President.

Removal from office.

10. (1) The President may remove the Director or Deputy Director from office if the Director or Deputy Director –

(a) has been convicted of an offence which involves moral turpitude;

(b) is unfit to continue in office by reason of infirmity of mind or body;

(c) had or has acquired such financial or other interest as is likely to affect prejudicially his functions under this Act; or

(d) based on the report of the Intelligence and Security Committee, has abused the powers of his office or failed to discharge the functions of his office in accordance with this Act.

(2) Before removing the Director or Deputy Director from office the President shall afford him an opportunity of making representations.

Resignation and vacancy.

11. (1) The Director or Deputy Director may at any time resign his office by written notification addressed to the President and the resignation shall take effect as from the date of the approval by the President of the resignation.

(2) Where the office of the Director or Deputy Director is vacant, that vacancy shall be filled by the appointment of another qualified person who shall hold office for the remainder of the period for which the Director or Deputy Director was appointed.

Assistant Directors.

12. (1) The Agency may comprise Assistant Directors with the same qualifications mentioned in section 8 to head departments dealing with matters falling under this Act.

(2) Assistant Directors shall be appointed by the Director after the Director recommends to the President that there is need for Assistant Directors and the President approves of the persons to be appointed.

(3) The terms and conditions of appointment of Assistant Directors shall be determined by the Director in consultation with the President or a person designated by the President.

(4) The grounds for removal from office mentioned in section 10(1) shall apply to the removal from office of Assistant Directors.

Officers and employees of the Agency.

13. (1) Subject to section 44(1)(c), the Director shall employ other officers and employees necessary for the discharge of the functions of the Agency.

(2) The Agency may include officers in active duty duly transferred or seconded to the Agency from entities in the security sector.

(3) Officers and other employees shall be persons of integrity and confidentiality.

(4) The Agency shall for the purpose of determining their level of responsibility and confidentiality –

(a) vet persons seeking employment in the Agency;

(b) periodically vet, officers and other employees; and

(c) with the consent of the persons being vetted carry out polygraph tests on them.

(5) The remuneration and other terms and conditions of employment of the officers and other employees shall be determined by the Director in consultation with the President or a person designated by the President.

(6) The grounds for removal from office mentioned in section 10(1) shall apply to the removal from office of officers and employees.

Superannuation benefits.

14. (1) The Agency may, with the approval of the Minister, make such provisions as it thinks appropriate for the payment of pension, gratuity or other allowance in respect of the service of the officers and employees of the Agency on their retirement from the Agency.

(2) Where a public officer, or any other person employed by the Government, is transferred or seconded to the Agency as an officer or employee, he shall be entitled to have his aggregate service in the public service, under the Government and as an officer or employee of the Agency counted for the purpose of superannuation benefits and he shall, on his ultimate retirement, be entitled to receive such benefits calculated in accordance with the Pensions Act, in respect of the aggregate of such service.

Cap. 27:02

Obligation to secrecy.

15. (1) Every person having an official duty or being employed in the administration of this Act shall regard and deal with as secret and confidential, all information relating to the functions of the Agency.

(2) Every person who had an official duty or was employed in the administration of this Act shall maintain, after such duty or employment is terminated, the confidentiality of all information relating to the functions of the Agency.

(3) Any person to whom information is communicated pursuant to this Act shall regard and deal with such information as secret and confidential.

(4) Subject to subsection (5), a person referred to in subsection (1), (2) or (3) having possession of or control over any information referred to in subsection (5), who at any time communicated or attempted to communicate any such information to any person commits an offence and is liable on conviction on indictment to a fine of five million dollars and to imprisonment for five years.

(5) A person does not commit an offence under subsection (4) where the communication or attempted communication was done pursuant to –

(a) the discharge of the functions under this Act or any other law;

(b) a court order;

(c) the investigation or prosecution of a serious crime, an offence or any other contravention of the laws of Guyana; or

(d) the investigation of a serious crime or a dangerous drugs offence committed by a Guyanese abroad in contravention of the laws of any other country which is party to the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988, or with which Guyana has a mutual legal assistance treaty.

Oath of office and secrecy.

16. Before entering on the duties of office in the Agency –

(a) the Director and Deputy Director shall take and subscribe the oath of office and secrecy set out in the First Schedule before the President;

First Schedule

(b) Assistant Directors and officers, except administrative officers, shall take and subscribe the oath of office and secrecy set out in the First Schedule before the Director; and

First Schedule

(c) administrative officers and employees shall take and subscribe the oath of office and secrecy set out in the Second Schedule before the Director.

Second Schedule

Funds of the Agency.

17. (1) The Agency shall be funded by a direct charge on the Consolidated Fund.

(2) The Minister of Finance shall present it to the National Assembly as part of the national budget.

(3) Funds of the Agency shall also include any grants, gifts, donations or other endowments given to the Agency which have been approved by the President.

(4) The funds of the Agency shall be applied in meeting the expenses of the Agency including the remuneration of the Director, Deputy Director, Assistant Directors, officers and other employees.

Accounts and audit.

18. (1) The Agency shall operate in accordance with the principles of sound financial and administrative management and shall do all things necessary for the efficient discharge of its functions.

(2) The accounts of the Agency shall be audited by the Auditor General annually.

(3) The Agency shall forward to the Minister a copy of the audited statement of accounts together with any report made by the Auditor General not later than one month after the receipt of the statement and the Minister shall, subject to subsection (4), ensure that the audited statement of accounts and report are laid in the National Assembly within one month after its receipt from the Agency, or if Parliament is not in session, within one month after the commencement of the next sitting.

(4) For reasons of national security –

(a) audited statements of accounts of the Agency and any report of the statements shall be redacted by the Minister, in consultation with the Director, to remove sensitive information before they are laid in the National Assembly; and

(b) annual statements of accounts of the Agency shall not be published by anyone.

(5) In addition to the annual audit, the Auditor General may, at any time, audit the accounts and examine the records of financial

transactions of the Agency and shall draw to the attention of the Director and Minister any irregularities disclosed by such audit and examination, which, in the opinion of the Auditor General, are of sufficient importance to be so reported.

Financial year.

19. The financial year of the Agency shall be the 1st January to 31st December.

PART IV

OPERATIONAL POWERS OF THE AGENCY

Operational powers of the Director.

20. The Director's powers shall include the powers to –

(a) organise, approve and supervise all activities of the Agency in accordance with this Act and other laws;

(b) direct analytical, technical and administrative partnership cooperation operations, and external operations of the Agency; and

(c) direct –

(i) operations to be mounted by officers of the Agency; and

(ii) how the operations are to be conducted.

Police and defence force powers to discharge functions.
Cap. 16:01
Cap. 15:01

21. In the discharge of their functions, all officers of the Agency shall have powers of a police under the Police Act and a defence force officer under the Defence Force Act.

Undercover intelligence support.

22. The Agency may provide the use of undercover intelligence support for its operations.

Interception of communications.

23. In the discharge of its functions the Agency shall have the power to intercept communications within the meaning of and in the

Cap. 47:03

manner provided in the Interception of Communications Act and for the purpose of application for warrants under that Act, the Director is an "authorised officer" within the meaning given to that expression in that Act.

Public body to provide information on request.

No. 21 of 2011

24. (1) The Agency may request a public body for information and the public body shall, notwithstanding the Access to Information Act 2011 or any other law, make available to the Agency any information requested within forty-eight hours or within a reasonable time stated in the request.

(2) Every request of the Agency under subsection (1) shall be in writing, and a copy filed and kept as of record.

(3) Making available any information under subsection (1) shall include facilitating the Agency to –

(a) inspect any work, document, record or other material;

(b) take notes, extracts or certified copies of any document, record or other material;

(c) take certified samples of any material; or

(d) obtain information in any digital or electronic mode or through printouts where such information is stored in a computer or in any other device.

Access to information.

No. 21 of 2011

25. For the purposes of the Access to Information Act 2011, the Agency in relation to its strategic or operational activities or in relation to the discharge of its functions shall not be regarded as a public authority.

Keeping the Agency informed.

26. In the interest of maintaining and promoting national security, all entities in the security sector shall provide the Agency with

all relevant and timely information and intelligence relating to national security interest.

Coordination of intelligence programmes and operations.

27. All other entities in the security sector whose mandates require the conduct of intelligence gathering operations shall consult with the Agency for the purpose of coordinating the intelligence programmes and operations of those entities.

Mutual cooperation.

28. The Agency and other entities in the security sector, shall mutually cooperate and assist each other in performing their duties regarding intelligence gathering and national security and shall coordinate activities within their competence.

Power to engage foreign agencies.

29. The Agency may, on approval by the President, engage, communicate and operate with foreign agencies to achieve a particular objective in the interest of national intelligence and security.

Intelligence support in the prevention or detection of crime.

30. (1) Any entity in the security sector or other national stakeholder engaged in the prevention or detection of crime may request the Director in writing for intelligence support of the Agency in the prevention or detection of crime.

(2) The Director may approve the request under subsection (1) and render the support.

(3) An oral request in an emergency shall be put in writing at the earliest opportunity.

Protection for institutions and facilities.

31. (1) The Agency shall make use of its operational tools and methods in order to provide protection for institutions and facilities of Guyana as well as to provide protection for State visits and other events as designated by the Minister.

(2) The Agency shall not provide physical protection for such institutions and events.

Officers to embassies abroad.

32. The Director with the approval of the President may assign officers of the Agency to serve as liaison officers to embassies abroad, when necessary for the fulfilment of the responsibilities of the Agency pursuant to this Act.

Protection of officers.

33. The Agency shall take all necessary action to ensure the safety and security of the officers of the Agency in the performance of their duties, including providing them with intelligence briefing, giving them the necessary tools to do their work, and the mechanisms needed or required as the situation arises to undertake their tasks.

Issue of arms and ammunition.

34. (1) The Minister shall with the approval of the President issue arms and ammunition to the Agency for the purposes set out in this section.

(2) The Director may authorise officers of the Agency to carry arms during the performance of their duties under this Act if it is suspected that the safety or lives of the officers or other persons are endangered.

(3) Arms may only be used and discharged in necessary defence.

(4) Inventory shall be made of the arms and ammunition issued to the Agency and a register kept by the Agency of arms and ammunitions authorised to officers and when returned.

(5) The Director shall ensure that the arms and ammunitions are kept in a secured place.

Security of intelligence.

35. The Director shall be responsible for the efficiency of the Agency and shall ensure –

(a) that there are arrangements for providing that no information is obtained by the Agency except so far as necessary for the proper discharge of its functions;

(b) that security measures commensurate to the risks arising from the processing of personal data are implemented to protect the information;

(c) implementation of measures designed to –

(i) prevent unauthorised processing of or access to the information, or unauthorised interference with the systems used in connection with the information;

(ii) to establish the precise details of any processing, access or interference that takes place;

(iii) achieve that systems used in connection with the processing function properly and may, in the case of interruption, be restored; and

(iv) provide that stored data cannot be corrupted if a system used in connection with the processing malfunctions.

Delegation.

36. (1) The Director may delegate, in writing, the exercise of any function conferred upon the Director under this Act to any officer of the Agency (hereinafter called "the delegate") as he thinks fit.

(2) A delegation under subsection (1) shall not affect –

(a) the exercise of the delegated function by the Director; or

(b) the responsibility of the Director in relation to acts of the delegate carried out in lawful exercise of the delegated function.

(3) Any act done by or in relation to the delegate pursuant to the delegated function shall have the same effect as if done by or in relation to the Director.

PART V

COMPLAINTS

Complaints.

37. (1) A complaint may be made by any person in writing to the Director in relation to any aspect of the operation of the Agency.

(2) A complaint under subsection (1) may be dealt with by the Director, or on the grounds of its magnitude, complexity or importance, it may be referred to the President with comments of the Director.

(3) The President may deal with the complaint to finality or refer it to the Intelligence and Security Committee appointed under section 38.

Intelligence and Security Committee.

38. There shall be an Intelligence and Security Committee consisting of three members appointed by the President as follows –

(a) one person nominated by the President acting in his own deliberate judgment;

(b) one person nominated by the leader of the main opposition party in the National Assembly after consultation with the other opposition parties in the National Assembly; and

(c) one person nominated by organisations representing civil society.

Functions of Committee.

39. (1) The functions of the Committee shall be to review any matter referred to the Committee by the President that engaged the consideration of the President including those set out in subsection (2).

(2) Matters that may be reviewed under subsection (1) include –

(a) matters of policy and administration relating to the Agency;

(b) complaints by any person –

(i) on any act or omission of the Agency; or

(ii) on the conduct of the Director, Deputy Director, any Assistant Director or any other officer or employee of the Agency;

(c) complaints referred by the President under section 37(3).

(3) The Committee shall not consider any matter listed in subsection (2) if it involves –

(a) a matter of significant national interest and forms part of an ongoing operation; or

(b) disclosure of information to an extent or in a manner that would be contrary to the public interest or prejudicial to national intelligence and security.

(4) The Committee shall review each matter referred to it under subsections (1) and (2), report on the facts leading to the outcome of the

review, expressing its written opinion on the outcome and making any necessary recommendations to the President.

PART VI

MISCELLANEOUS

Obstruction of or interference with officers of the Agency in discharge of functions.

40. A person who obstructs or interferes with an officer or other person employed by the Agency in the exercise of the rights conferred or duties imposed on the officer or other person under this Act commits an offence and is liable on summary conviction to a fine of two million dollars.

Immunity from suit.

41. (1) No civil or criminal action, suit or other proceedings for breach of confidentiality (including confidentiality arising from legal professional privilege) may be brought, nor any professional sanction for such breach may be taken, against any person, who in good faith (under this Act or any other law) provides or transmits information requested by the Agency or submits a report to the Agency.

(2) No suit or other proceedings may be brought or instituted personally against the Director or any other officer of the Agency in respect of any lawful act done or omission made in good faith, in the course of carrying out the provisions of this Act.

Removal of difficulties.

42. If any difficulty arises in giving effect to the provisions of this Act, the Minister, after consultation with the President, may by order make provisions as appear to the Minister to be necessary or expedient for the removal of the difficulty.

Regulations.

43. (1) The Minister, in consultation with the Director and with the approval of the President, may make regulations for the better carrying out of the provisions of this Act.

(2) The regulations may provide for offences and penalties for their contravention; the fines shall not exceed one million dollars and the terms of imprisonment shall not exceed two years.

Transitional provisions.

44. (1) On the commencement of this Act –

(a) the Director of the Agency immediately before its establishment under section 3 shall continue as Director of the Agency appointed by the President under section 6 for a term determined by the President under section 9 and shall be eligible for reappointment;

(b) the Deputy Director of the Agency immediately before its establishment under section 3 shall continue as Deputy Director of the Agency appointed by the President under section 7 for a term determined by the President under section 9 and shall be eligible for reappointment; and

(c) the officers and other employees of the Agency before its establishment under section 3 shall continue as officers and employees of the Agency appointed under this Act on the same terms and conditions which preceded the establishment of the Agency, and any other terms and conditions duly approved, with no diminution in remuneration.

(2) Movable and immovable property of the Agency before its establishment under section 3 shall continue to be those of the Agency.

(3) Any act or thing duly done or being done, or liability incurred by the Agency before its establishment under section 3 shall on the

commencement of this Act continue as the act, thing or liability of the Agency.

Consequential amendments.

Cap. 47:03

No. 21 of 2011

45. (1) In consequence of the preceding provisions of this Act, the Interception of Communications Act and the Access to Information Act 2011 shall have effect subject to the amendments in subsections (2) and (3).

Cap. 47:03

(2) Section 2(1) of the Interception of Communications Act, is amended in the definition of "authorised officer" as follows –

(a) in paragraph (b), by the deletion of the word "or";

(b) in paragraph (c), by the insertion immediately after the semicolon, of the word "or"; and

(c) by the insertion immediately after paragraph (c), of the following paragraph –

"(d) the Director of the National Intelligence and Security Agency;".

No. 21 of 2011

(3) The Access to Information Act 2011 is amended as follows –

(a) in section 4(2) –

(i) in paragraph (c), by the substitution for the full stop, of a semicolon; and

(ii) by the insertion immediately after paragraph (c), of the following paragraph –

"(d) the National Intelligence and Security Agency, in relation to its strategic or operational activities or in relation to

the discharge of its functions shall not be regarded as a public authority."; and

(b) in section 28(1)(c), by the insertion immediately after the words "disciplined forces" of the words "and the National Intelligence and Security Agency".

FIRST SCHEDULE

s. 16

Oath of Office and Secrecy

(for Directors and other officers)

I ....., [rank, if any] do hereby solemnly declare that I will bear true faith and allegiance to the People of Guyana that I will faithfully execute the office of ..... without fear or favour, affection or ill will and that in the execution of the functions of that office under the National Intelligence and Security Act 2023 and any other law I will honour, uphold and preserve the Constitution of the Co-operative Republic of Guyana, and that I will not, without due authority, disclose or make known verbally or otherwise any matter or information that comes to my knowledge by reason of my service in such office.

Signature of declarant:

.....

Sworn before me this ..... day of ..... 20....

Signature of Director of the National Intelligence and Security Agency:

.....

SECOND SCHEDULE

s. 16

Oath of Office and Secrecy

(for administrative staff)

I ……., do hereby solemnly declare that I will faithfully execute the duties that devolve upon me by reason of my employment at the National Intelligence and Security Agency and that I will not, without due authority, disclose or make known verbally or otherwise any matter or information that comes to my knowledge by reason of such employment at the National Intelligence and Security Agency.

Signature of declarant:

……..

Sworn before me this …… day of …… 20….

Signature of Director of the National Intelligence and Security Agency:

……

Explanatory Memorandum

Part I - Preliminary

Clause 1 sets out the short title.

Clause 2 provides the interpretation section for the Act. Agency means the National Intelligence and Security Agency. Other important terms such as entities in the security sector, Minister, national intelligence estimates, national security interest, national security threat and a public body are also defined.

Part II - National Intelligence and Security Agency

Clause 3 provides for the establishment of the body known as the National Intelligence and Security Agency as an Agency which shall further enhance the State's defence and security policy.

Clause 4 provides the functions of the Agency. The functions include collecting information of national intelligence and security that will provide a basis for decision making and preventive action and conducting analysis of the information, providing intelligence and security advice to the President, Cabinet and, on the President's direction where necessary, Ministers and entities in the security sector and other national stakeholders.

The functions of the Agency shall be exercisable in the interest of national intelligence and security regarding foreign policy, threats from espionage and protection from undermining of democracy and State institutions.

Clause 5 provides for the President to give general and special directions to the Agency. It provides that the President may, after consultation with the Minister or any other person the President considers appropriate, give directions to the Director of a general or specific character regarding policy to be followed by the Agency and the Director shall give effect to those directions.

Part III - Administration of the Agency

Clause 6 provides for a Director of the Agency. The President shall appoint a Director to head the Agency. The Director shall have the authority, direction and control over the Agency subject only to the President. The Director's official standing shall be equivalent to a position not less than a Chief-of-Staff or Commissioner of Police. The Director shall, subject to the requirement of legal advice, be the Principal adviser to the President on matters relating to the provisions of this Act.

Clause 7 provides for a Deputy Director of the Agency. The Deputy Director appointed by the President shall assist the Director in the discharge of the functions of the Agency and may act for the Director during the absence or incapacity of the Director.

Clause 8 provides for the qualifications of the Director and Deputy Directory. The qualifications of the Director and Deputy Director shall be a minimum of a first degree (or of an equivalent level) from a recognised university in the field or related field of intelligence, counter intelligence, security and defence or strategic studies.

Clause 9 provides for the terms and conditions of appointment of the Director and Deputy Director. The appointments of the Director and Deputy Director shall be for a period of not less than three years and not more than five years as determined by the President. It also provides for their renumeration and other terms and conditions of appointment.

Clause 10 provides for the removal of the Director and Deputy Director from office. The President may remove the Director or Deputy Director from office on any of several grounds, but before removal there must be a hearing. The grounds for removal include misconduct, abuse of the powers of office and failure to discharge the functions of office.

Clause 11 provides for the resignation of the Director and Deputy Director and the filling of a vacancy in any of the two offices. The Director or Deputy Director may at any time resign his office by notification in writing addressed to the President.

Clause 12 provides for the appointment of Assistant Directors. The Agency may comprise Assistant Directors to head departments dealing with matters falling under this Act. Assistant Directors shall be appointed by the Director after the Director recommends to the President that there is need for Assistant Directors and the President approves of the persons to be appointed.

Clause 13 provides for officers and employees of the Agency. The Director may employ such number of officers and employees for the Agency as are necessary for the discharge of the functions of the Agency. The Agency may include officers in active duty duly transferred or seconded for duty with the Agency from entities in the security sector. Officers and other employees shall be persons of integrity and confidentiality who shall be remunerated as determined by the Director in consultation with the President or a person designated by the President.

Clause 14 deals with superannuation benefits.

Clause 15 provides for the obligation to observe secrecy. Every person having a duty in the administration of this Act shall regard and deal with as secret and confidential all information relating to the functions of the Agency, and if at any time such person communicated or attempted to communicate any such information to any person other than in pursuance of, for instance, the discharge of a function under this Act, a Court order or the investigation of a crime, the person commits an offence and is liable on conviction on indictment to a fine of five million dollars and to imprisonment for five years.

Clause 16 provides for the oath of office and secrecy to be taken and subscribed by anyone before entering upon any duties of office in the Agency.

Clause 17 provides for the funds of the Agency. The Agency shall be funded by a direct charge on the Consolidated Fund. The budget of the Agency shall be presented to the National Assembly as part of the national budget by the Minister of Finance. Funds of the Agency shall also include any grants, gifts, donations or other endowments given to the Agency which have been approved by the President. The funds shall be applied to meet the expenses of the Agency including remuneration of employees.

Clause 18 provides for the accounts of the Agency to be audited by the Auditor General annually.

Clause 19 sets out the 1st January to 31st December as the financial year.

Part IV - Operational Powers of the Agency

Clause 20 provides for the operational powers of the Director. The Director shall have full operational powers including power to organise, approve and supervise all activities and direct analytical and technical cooperation and external operations.

Clause 21 provides for officers of the Agency in the discharge of their functions to have powers of police and officers of the defence force.

Clause 22 provides for undercover intelligence support. The Agency has power to provide the use of undercover intelligence support for its operations.

Clause 23 provides the interception of communications. In the discharge of its functions the Agency shall have the power to intercept communications within the meaning of and in the manner provided in the Interception of Communications Act, Cap. 47:03.

Clause 24 provides for the provision of information by public bodies to the Agency on request by the Director notwithstanding the Access to information Act 2011 or any other law.

Clause 25 provides that for the purposes of the Access to Information Act 2011 the Agency shall not be regarded as a public authority.

Clause 26 provides for the Agency to be kept informed by entities in the security sector with all relevant and timely information and intelligence relating to national security interest.

Clause 27 provides for other entities in the security sector whose mandates require the conduct of intelligence gathering operations to consult with the Agency for the purpose of coordinating the intelligence programmes and operations of those entities.

Clause 28 provides for mutual cooperation between the Agency and other entities in the security sector. They shall mutually cooperate and assist one another in performing their duties regarding intelligence gathering and national security.

Clause 29 provides for the Agency to have power, subject to approval by the President, to engage, communicate and operate with foreign agencies to achieve a particular objective in the interest of national intelligence and security.

Clause 30 provides for intelligence support to law enforcement agencies, other entities in the security sector or other national stakeholders in the prevention or detection of crime. Request for support shall be made to the Director in writing. In a justifiable case, the Director shall approve of the request and render the support.

Clause 31 provides for the Agency to make use of its operational tools and methods in order to provide protection for institutions and facilities of Guyana but the Agency shall not provide physical protection for such institutions and events.

Clause 32 provides for officers of the Agency to be sent to embassies abroad. The Director with the approval of the President may assign officers of the Agency to serve as liaison officers to embassies abroad, when necessary for the fulfilment of the responsibilities of the Agency pursuant to this Act.

Clause 33 provides for the protection of officers. The Agency shall take all necessary action to ensure the safety and security of the officers of the Agency in the performance of their duties.

Clause 34 provides for the issue arms and ammunitions to the Agency. The Minister shall with the approval of the President issue arms and ammunition to the Agency. Arms may only be used and discharged in necessary defence.

Clause 35 provides for security of intelligence. The Director shall be responsible for the efficiency of the Agency, shall ensure that security measures are in place to protect information and that measures are implemented to prevent unauthorised interference with the information system.

Clause 36 provides for the Director to have the power to delegate the exercise of any function conferred upon the Director under this Act to any officer of the Agency.

Part V - Complaints

Clause 37 provides for complaints. It provides that a complaint may be made to the Director in relation to any aspect of the operation of the Agency. The complaint may be dealt with by the Director or in view of its complexity referred to the President. The President may deal with the complaint to finality or refer it to the Intelligence and Security Committee.

Clause 38 establishes the Intelligence and Security Committee which shall consist of three members appointed by the President. The members shall be one person nominated by the President, one person nominated by the leader of the main opposition party in the National Assembly after consultation with the other opposition parties in the National Assembly and one person nominated by organisations representing civil society.

Clause 39 sets out the functions of the Committee. The Committee shall review the referred matter and express its opinion on any question and make recommendations to the President.

Part VI - Miscellaneous

Clause 40 provides for the offence of obstruction of or interference with officers of the Agency in the discharge of their functions. A person who commits an offence and is liable on summary conviction to a fine of 2 million dollars.

Clause 41 provides for immunity from suit. No civil or criminal proceedings for breach of confidentiality may be brought against any person who in good faith provided information requested by the Agency.

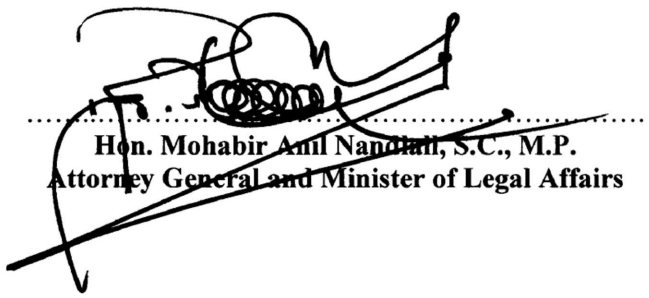
No suit may be brought personally against the Director or any other officer of the Agency for any lawful act done or omission made in good faith in carrying out the provisions of this Act.

Clause 42 gives power to the Minister to remove difficulties that may arise in giving effect to the provisions of this Act. Such difficulty may by order be removed by the Minister after consultation with the President.

Clause 43 provides for the making of Regulations for the better carrying out of the provisions of this Act.

Clause 44 provides for transitional provisions. On the commencement of this Act, the Director, Deputy Director, officers and other employees of the Agency immediately before its establishment under this Act shall continue to be the Director, Deputy Director and officers and employees of the Agency appointed under this Act.

Clause 45 provides for the amendment of certain Acts. In consequence of the provisions of this Act, it is necessary to amend the Interception of Communications Act, Cap. 47.03, and the Access to Information Act 2011 in certain respects to enable the Agency to discharge certain functions.



Hon. Mohabir Anil Nandlall, S.C., M.P.
Attorney General and Minister of Legal Affairs