

國家情報工作法立法特色及修法之評析

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目 次

- 壹、緒論
- 貳、國家情報工作法之特色
 - 一、明文定義情報工作內涵
 - 二、賦予情報機關秘密蒐情之權限
 - 三、明文情報機關定義
 - 四、情報中立化
 - 五、情報工作人員之保障
 - 六、情報機關之統合
 - 七、具有特別法性質
 - 八、拼裝式立法
 - 九、轉變國家安全局之角色
- 參、國家情報工作法歷次修法過程
 - 一、第一次修正（2010.5.19）
 - 二、第二次修正（2011.6.29）
 - 三、第三次修正（2015.6.24）
- 肆、國家情報工作法修法評析
 - 一、給付行政措施導向思維
 - 二、反制間諜特別刑法化
 - 三、秘密情蒐法制化方向已有調整未竟全功
- 伍、結語

關鍵詞：情報機關、情報蒐集、國家情報工作法、反制間諜、個人資料保護法

Keywords：Intelligence Organizations, Intelligence Gathering, National Intelligence Service Law, Anti-espionage, Personal Data Protection Law

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摘要

我國首部情報作用法—國家情報工作法於 2005 年 2 月制定公布，其內容包含明定情報工作內涵、情報中立化、秘密情報蒐集之權限、從事情報工作人員之保障、情報統合等，為我國情報工作法治化的重要里程碑。而在制定之後，迄今已修正三次，在提昇情報工作人員權益保障等給付行政措施、強化反制間諜工作能量、加強情報工作統合等面向，已有一定進展。而從修法過程，擴大情報工作獎勵範圍、增加補償救助適用範圍及補償項目、允許主管機關訂定外勤人員待遇及支給標準等，可以看出給付行政措施導向思維；而反制間諜措施，包含消極面允許排除刑事訴訟法告發義務之適用、調閱間諜嫌疑人的個人資料、提高非軍人犯間諜罪，以及積極面明定間諜豁免條款，則顯示反制間諜特別刑法化之特色，惟在秘密情報蒐集部分，尤其是個人資料蒐集，規範仍有不足。

An Analysis of the legislation and Amendment of the National Intelligence Service Law

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Abstract

The National Intelligence Service Law enacted in February 2005 is the first to regulate the operation of intelligence agencies. The content of National Intelligence Service Law is consisted of the neutrality of intelligence, the condition for secretly gathering intelligence, the protection for intelligence agents, and intelligence integration...etc, which are regarded as a critical milestone for intelligence service institutionalization.

The law has been amended for three times so far after it was enacted thus to reach great progress in the measures of service administration from the aspects of protecting the rights and interests of intelligence agents, reducing espionage activities, and promoting intelligence integration. Besides, in the amending process, We can find that it is service administrative to orient towards the phase of enlarging room for rewarding intelligence service, extending the scope and terms of compensation and assistance, and to grant the authorities to stipulate treatment and reward standards for field agents. Moreover, it exhibits the spirit of special criminal law in anti espionage, which includes passively excluding the application of Criminal Procedure Law in report, accessing to personal data of espionage suspects, aggravating punishment for non militant espionage, and laying out the exemption clauses for espionage activities explicitly. However, the law related to gathering intelligence secretly, especially gathering the personal data of individuals, still has room to improve.