

Overview of the Act on the Protection of Specially Designated Secrets (SDS)

Cabinet Secretariat

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Overview of the Act on SDS Protection: 1. Designation of SDS

Provisional Translation

1. The Head of an Administrative Organ shall designate, as Specially Designated Secrets, ① information concerning the matters set forth in the Appended Table, ② which is publicly undisclosed, and ③ which if disclosed without authorization, has the risk of causing severe damage to Japan's national security and therefore which is particularly required to be kept secret.

Appended Table

Item (i) Defense * Equivalent to the Appended Table 4 of the SDF Act

- (a) operation of the Self-Defense Forces or assessments, plans or studies relevant thereto
- (b) signal information, image information and other important information collected in connection with defense
- (c) collection and coordination of the information set forth in (b) or the capacity thereof
- (d) assessments, plans or studies relevant to the defense capability build-up
- (e) type or quantity of weapons, ammunition, aircraft and other goods provided for use in defense
- (f) structure of the communications network or means of communications used for defense
- (g) cryptology used for defense
- (h) specifications, performance or method of use of weapons, ammunition, aircraft and other objects used for defense or of those in the research and development stage
- (i) methods of production, inspection, repair or test of weapons, ammunition, aircraft and other objects used for defense or of those in the research and development stage
- (j) designs, performance or internal use of facilities used for defense

Item (ii) Diplomacy

- (a) policies or contents of negotiations or cooperation with a government of a foreign country or an international organization which are important to national security, such as the protection of the lives and bodies of citizens or maintaining territorial integrity
- (b) prohibition on the import or export of goods or other measures that Japan implements for national security or the policies thereof
- (c) important information pertaining to the protection of the lives and bodies of the citizens, maintaining territorial integrity or the peace and security of the international community or information that requires protection based on a treaty or other international agreement, which has been collected in connection with national security
- (d) collection and coordination of the information set forth in (c) or the capacity thereof
- (e) cryptology used in communications between the Ministry of Foreign Affairs and overseas diplomatic establishments and other diplomatic purposes

Item (iii) Prevention of Specified Harmful Activities (e.g. Counterintelligence)

- (a) measures for Prevention of Specified Harmful Activities or plans or studies relevant thereto
- (b) important information pertaining to the protection of the lives and bodies of citizens or information from a government of a foreign country or an international organization, which has been collected in connection with the Prevention of Specified Harmful Activities
- (c) collection and coordination of the information set forth in (b) or the capacity thereof
- (d) cryptology used in the Prevention of Specified Harmful Activities

Item (iv) Prevention of Terrorist Activities

- (a) measures for Prevention of Terrorist Activities or plans or studies relevant thereto
- (b) important information pertaining to the protection of the lives and bodies of the citizens or information from a government of a foreign country or an international organization, which has been collected in connection with the Prevention of Terrorist Activities
- (c) collection and coordination of the information set forth in (b) or the capacity thereof
- (d) cryptology used in the Prevention of Terrorist Activities

- 2. The Head of an Administrative Organ shall specify **the effective period of designation not exceeding 5 years (renewable)** and **terminate the designation promptly** even before the expiration of the effective period when the information no longer meets the requirements for designation.
- 3. The effective period of designation **shall not exceed 30 years in total** unless the Head of the Administrative Organ obtains **the approval of the Cabinet** by indicating the reasons for the extension of the term in order to ensure the safety of Japan and its citizens. Even in this case, **the Head shall not extend the effective period when it exceeds 60 years in total** except for such cases as involving information on cryptology and human intelligence sources.
- 4. The Head of an Administrative Organ shall take **necessary measures to protect SDS** including determining the scope of officials who handle SDS and marking, as a SDS, the document which records SDS.

1. Restriction on persons who handle SDS

Handling SDS shall be limited to **government personnel, employees of eligible contractors and prefectural police officers who, in the Security Clearance Assessment, have been found to have no risk of unauthorized disclosure of SDS.**

* Heads of Administrative Organs, Ministers of State, Deputy Chief Cabinet Secretaries, Special Advisors to the Prime Minister, Parliamentary Senior Vice-Ministers, Parliamentary Vice-Ministers and other persons who are specified by Cabinet Order in consideration of the nature of their duties, etc. shall not be required to undergo the security clearance process.

** Those receiving SDS for the sake of the public interest (see page 3) shall not be required to undergo the security clearance process.

2. Adjudicators

Heads of Administrative Organs
(or Chiefs of Police)

3. Person subject to Assessment

Those who are expected to handle SDS in duty among government personnel, employees of eligible contractors or prefectural police officers

4. Matters for Examination

- (1) Relationship with any specified harmful activities and terrorist activities
- (2) Criminal and disciplinary records
- (3) Records of improper conduct in connection with the handling of information
- (4) Abuse and the influence of drugs
- (5) Mental disorders
- (6) Moderation in drinking alcohol
- (7) Credit status and other financial situation

* With respect to examinations regarding (1), the scope of examination into examinees' relatives (spouses, parents, children and siblings, as well as spouses' parents and children) and cohabitants shall be limited to name, date of birth, nationality and address.

5. Procedures

Obtain examinees' consent

To the extent necessary for conducting the examination,
(i) Ask questions to the examinees and those concerned including their supervisors and colleagues;
(ii) Request that examinees submit materials;
(iii) Make inquiries to public or private organizations, etc.

Verify whether the examinees have risk of unauthorized disclosure of SDS

Notify the examinees of the results

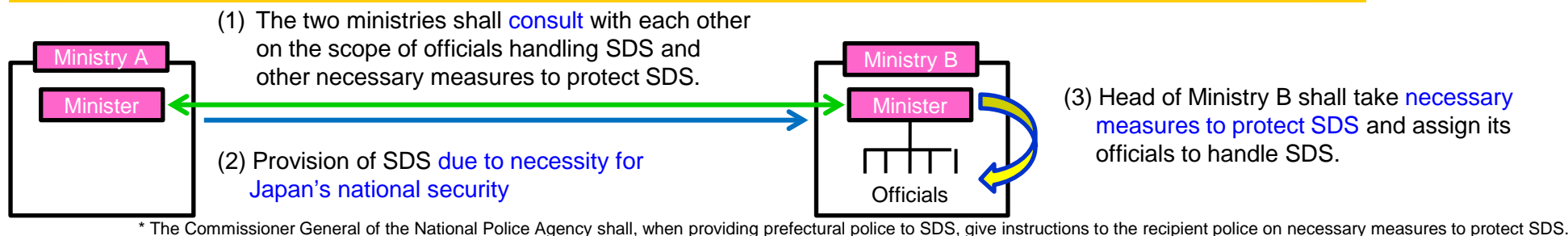
Respond to the examinees' complaints on the assessment

6. Restriction on Use and Provision of Information Obtained in the Procedures for Any Other Purposes

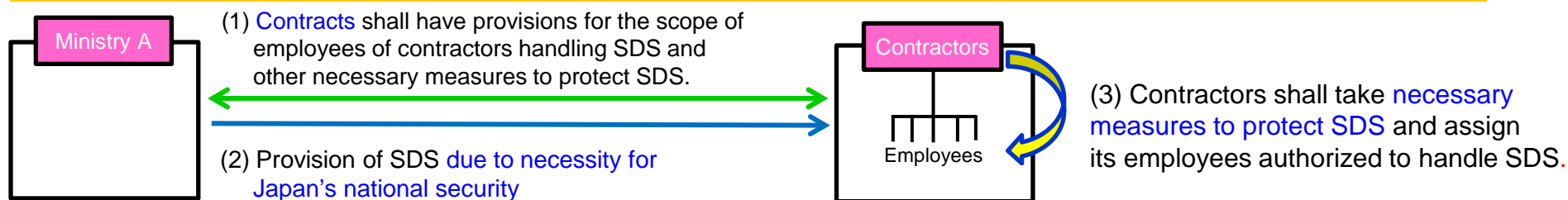
- (1) Refusal to undergo the security clearance assessment
- (2) Results of the security clearance assessment
- (3) Any other personal information acquired in the course of conducting the process

shall not be **used or provided for any other purposes** except for cases where the examinees are alleged to warrant a disciplinary punishment under the National Public Service Act, etc.

1 Provision of SDS to Other Administrative Organs due to Necessity for Japan's National Security



2 Provision of SDS to Eligible Contractors Based due to Special Necessity for Japan's National Security



3 Other Cases of SDS Provision for the Sake of the Public Interest, etc.

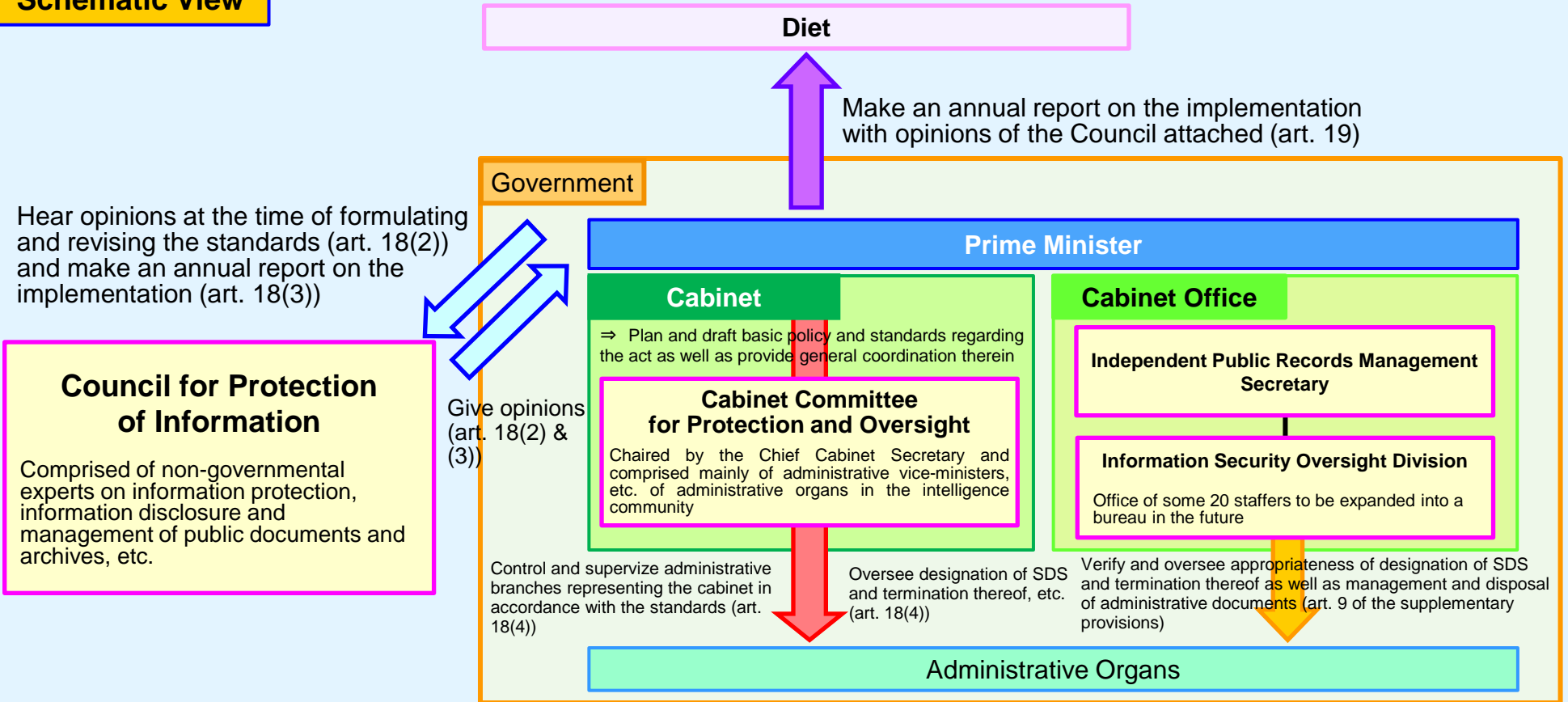
- (1) Provision of SDS to **foreign governments or international organizations** → when **measures necessary for ensuring the protection of SDS** are taken
- (2) Provision of SDS to undisclosed reviews or research by the Diet →
 - when ① **measures specified by the Diet pursuant to Article 10 of the Supplementary Provisions** are taken
 - ② **the head of the providing administrative organ confirms such provision would not cause severe damage to Japan's national security**
- (3) Criminal investigations and other **activities for the sake of special public interest** →
 - when ① **measures necessary for ensuring the protection of SDS** are taken
 - ② (same as above (2) ②)
- (4) Protection of SDS to courts in accordance with Paragraph 6, Article 223 of the Code of Civil Procedure, or to review boards for examinations in accordance with Paragraph 1, Article 9 of the Act on the Establish of the Information Disclosure and Personal Information Protection Review Board → when SDS are presented under so-called **"in-camera" procedure**

Overview of the Act on SDS Protection: 4. Appropriate Implementation

Multilayered System for Appropriate Implementation of the Act

1. **Standards** concerning SDS designation, etc. shall be **formulated by the Cabinet Decision after hearing opinions from an expert panel** comprised of specialists in the protection of information concerning Japan's national security, information disclosure, management of public records, etc.
2. **The Prime Minister** may give instructions to the Head of an Administrative Organ to **improve the implementation of the act** in accordance with the standards.
3. The government shall **submit to the Diet and make publicly available an annual report on the implementation of this act**, with opinions of the expert panel attached to the report.
4. Deliberations will take place to ensure proper designation of SDS and termination thereof, and necessary steps, including the **establishment of an independent and impartial organ charged with reviewing implementation**, etc., shall be implemented based on the results of these deliberations.

Schematic View



Penalty for Unauthorized Disclosure of SDS, etc.

1. Unauthorized disclosure of SDS shall be punished when intentionally or negligently committed by:
 - (1) **Those who are engaged in the duty of handling SDS**
Intentional: Imprisonment for not more than 10 years
By negligence: Imprisonment for not more than 2 years or fine of not more than 500,000 yen
 - (2) **Those who have come to know SDS in the course of performing the duty for which the SDS was provided**
Intentional: Imprisonment for not more than 5 years
By negligence: Imprisonment for not more than 1 year or fine of not more than 300,000 yen
2. **Acquisition of SDS through the following acts to promote the interests of a foreign country, etc. shall be punished by imprisonment for not more than 10 years:**
 - (1) Deceiving, assaulting or intimidating a person; (2) Theft or destruction of property; (3) Trespassing on a facility;
 - (4) Interception of wired communications; (5) Unauthorized computer access;
 - (6) Any other act excluding (2) to (5) that undermines the control of SDS holders.
3. Those who **attempt, conspire to effect, induce or incite** intentional disclosure or acquisition of SDS through the acts listed above shall be punished.

Other Issues including Interpretation and Application of This Act

1. The act stipulates that, **when applying this act, expanding its interpretation to unfairly violate the fundamental human rights of citizens shall be prohibited, and due consideration shall be paid to freedom of news reporting or freedom of news coverage that contributes to guaranteeing the right of citizens to know.**
2. The act also stipulates that **news coverage activities performed by persons engaged in publishing or news reporting shall be treated as activities in the pursuit of lawful business as long as they are conducted solely for the benefit of the public and they are not found to have been performed through violation of laws or regulations or by extremely unreasonable means.**
3. The act shall come into effect within 1 year from the date of promulgation and stipulate transitional measures regarding restriction on persons who handle SDS.
4. The Self-Defense Forces Act shall be partially revised to delete provisions for Defense Secrets (*Bouei Himitsu*).
5. The Cabinet Act shall be partially revised so that **the Director of Cabinet Intelligence shall administer the affairs of protection of Specially Designated Secrets.**