



OFFICIAL SECRETS ACT 1989
SUMMARY OF THE PROVISIONS OF THE ACT

Section 1

9. Section 1 creates two offences of disclosing information relating to security or intelligence. The first applies to members and former members of the security and intelligence services and prohibits them from disclosing any information relating to or purporting to relate to security or intelligence (which is defined). The Section also creates a power for a Minister of the Crown to notify a person whose work is connected with the services, if national security requires it, that this offence also applies to him. The Minister has a duty to revoke the notification as soon as the nature of that person's duties changes, but a notification will automatically lapse after five years unless renewed.

10. The Section also makes it an offence for any other Crown servant or government contractor to make a disclosure without lawful authority of information relating to security or intelligence, if that disclosure causes or would be likely to cause damage to the work of the security and intelligence services.

11. There is a defence for a person charged with either offence to prove that he did not know and had no reasonable cause to believe that the information in question related to security or intelligence and a defence for a Crown servant or government contractor charged with the second offence described in paragraph 10 above to prove that he did not know and had no reasonable cause to believe that his disclosure would be damaging.

Section 2

12. Section 2 makes it an offence for a Crown servant or government contractor to make an unauthorised disclosure of information relating to defence (which is defined) if it damages the capability of the armed forces to carry out their tasks, leads to death or injury of a member of the armed forces or serious damage to the forces' equipment or installations or if it endangers the interests of the United Kingdom abroad, seriously obstructs the promotion or protection of those interests or endangers the safety of British citizens abroad or if it is likely to have any of these effects. It is a defence for the accused to prove that he did not know and had no reasonable cause to believe that the information related to defence or that its disclosure would be damaging.

Section 3

13. Section 3 makes it an offence for a Crown servant or government contractor to disclose information relating to international relations (which is defined) or information received in confidence from another State or an international organisation if it endangers the interests of the United Kingdom abroad, seriously obstructs the promotion of those interests or endangers the safety of British citizens abroad or is likely to have any of these effects. It is a defence for the defendant to prove that he did not know and had no reasonable cause to believe the information was of this nature or that its disclosure would be damaging.



Section 4

14. Section 4 makes it an offence for a Crown servant or government contractor to make an unauthorised disclosure of information that results in the commission of offences, facilitates an escape from custody or impedes the prevention or detection of crime or the apprehension or prosecution of offenders or is likely to have any of these effects. It also makes it an offence for a Crown servant or government contractor to make an unauthorised disclosure of information relating to or obtained by the interception of communications undertaken under a warrant issued under the Interception of Communications Act 1985 or of information relating to or obtained by any action undertaken under a warrant issued under the Security Service Act 1989. It is a defence for anyone charged under this section to prove that he did not know that the information in question fell within this section or, in the case of information relating to crime, that he did not know that its disclosure would have the effects described above.

Section 5

15. Section 5 makes it an offence for someone who is not a Crown servant or government contractor to make an unauthorised disclosure of official information protected under sections 1-4, which has been entrusted to him or has come into his possession as a result of an unlawful disclosure by a Crown servant or government contractor. The conditions of the offence are that he knew, or had reasonable cause to believe, that the information in question was protected that, where there is a test of harm (as there is in respect of this section for all cases arising under sections 1-3) its disclosure was or was likely to be harmful and he had reasonable cause to believe that it would be. This section also makes it an offence to disclose information that has come into a person's possession as a result of a breach of Section 1 of the 1911 Act, which deals with espionage.

Section 6

16. Section 6 applies to information relating to security or intelligence, defence or international relations where the information was originally provided by the government in confidence to another State or an international organisation and then leaked abroad. The Section makes it an offence to disclose such information where the defendant knows that it is protected by this section, disclosure causes or is likely to cause the harm specified in section 1-3 for the particular type of information and the defendant knows that it would, and the State or organisation concerned has not authorised the disclosure or made the information public.

Section 7

17. Section 7 defines the circumstances in which the disclosure of any information to which the Act applies is made with lawful authority. It provides a general defence for anyone charged with any offence of making an unlawful disclosure to prove that he believed he had lawful authority to make the disclosure in question.



Section 8

18. Section 8 creates offences relating to actions that increase the danger of disclosure.

19. Under Section 8(1) it is an offence for a Crown servant to retain information protected by the Act contrary to his official duty. It is a defence for him to prove that he believed he was acting in accordance with his official duty and had no reasonable cause to believe otherwise. It is also an offence for a Government contractor to fail to comply with such an official direction and it is an offence in both cases to fail to take reasonable care to prevent unauthorised disclosure.

20. Under Section 8(4) it is an offence for any person in possession or control of information relating to security, intelligence, defence or international relations (as protected by sections 1-4 of the Act), which has been entrusted to him or come into his possession as a result of unlawful disclosure by a Crown servant or government contractor, to fail to comply with an official direction for the return or disposal. It is also an offence, where such information has been obtained on terms requiring it to be held in confidence or where it could reasonably be expected to be held in confidence, to fail to take reasonable care to prevent its unauthorised disclosure.

21. Under Section 8(5) it is an offence for any person in possession or control of information protected by Section 6 of the Act (certain information provided in confidence to another State) to fail to comply with an official direction for its return or disposal.

22. Under Section 8(6) it is an offence to disclose any information that can be used to obtain access to information protected by the Act in circumstances where it would be reasonable to expect that it might be used for that purpose.

23. "Official Direction" includes a direction duly given by a Crown servant.

Section 10

25. Section 10 prescribes penalties. For all offences except the three summary offences under 8(1), (4) and (5) the maximum penalties are: on conviction on indictment two years' imprisonment, or a fine or both; on summary conviction, six months imprisonment or the statutory maximum fine (at present £2000) or both. For the three summary offences under section 8 the maximum penalty is three months' imprisonment or a fine at level 5 on the standard scale (at present £2000) or both.

Section 12

28. This section defines "Crown servant" and "government contractor" for the purpose of the Act. The definition of Crown servant includes Ministers, civil servants, members of the armed forces, police officers and civilian staff attached to any police force established under the Police Act 1964.