

## Section 11 cont'd

27. Section 11 also empowers a court to exclude the public on grounds of national safety from hearings for offences under the Act except the summary offences; and provides that proceedings for offences under the Act may be taken in any place in the United Kingdom.

## 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 police staff attached to any police force established under the Police Act, 1964 (but not the police staff of any other force). Provision is made for the Secretary of State to prescribe as Crown Servants (by order subject to the affirmative resolution procedure) office holders and some or all of their staff and some or all of the members of staff of bodies. A list of those that have been so prescribed is at Appendix B. government Contractors are defined as persons other than Crown Servants who provide goods or services for the purposes of any Minister or body of Crown Servants.

## Sections 13 and 16

29. Section 13 defines various terms used in the Act, Section 14 provides for the Secretary of State to make orders by statutory instrument and for the Parliamentary procedure for such orders.
30. Section 15 provides for the territorial and extraterritorial extent of the Bill (it applies to the whole of the United Kingdom and to offences committed abroad by British citizens and Crown Servants); and Section 16 deals with the short title and commencement and introduces two schedules of consequential amendments, repeals and revocations.

## Official Secrets Act, 1989



1. The Official Secrets Act, 1989, together with the Prescription Order made under it, came into force on 1st March, 1990.
2. The Act replaces Section 2 of the Official Secrets Act, 1911, under which, broadly, it was a criminal offence to disclose any official information without lawful authority. Under the new Act, unauthorised disclosure of information is an offence only if it falls within a specified category and then only if disclosure satisfies any relevant test of damage provided by the Act.
3. The classes of information protected by the Act (as defined in the Act) are:
  - Information about security or intelligence;
  - Information about defence;
  - Information about international relations;
  - Confidential information obtained from a foreign State or international organisation;
  - Information likely to result in the commission of an offence or likely to impede the prevention or detection of offences;
  - Information obtained by reason of action authorised by a warrant issued under Section 2 of the Interception of Communications Act, 1985; or under Section 3 of the Security Service Act, 1989; and
  - Information which can be used to obtain access to information protected by the Act.

## Implications for Police Officers

4. All constables and persons employed or appointed in or for the purposes of any police force are included within the definition of Crown Servant in Section 12 of the Act and consequently are bound by the obligations the Act imposes on Crown Servants to protect information. The same is true of the police staff attached to any police force established under the Police Act, 1964 (but not the police staff of any other force). Particular attention is drawn to Section 4 of the Act.
5. Under Section 1(1) of the new Act it is an offence for a person who is or who has been a member of the security intelligence services or for a person notified that he is subject to the offence provided by Sub-Section 1(1) to disclose any information relating to security or intelligence which he has obtained by virtue of his position as a member of the security and intelligence services or his position in the notified post. So far as the police are concerned, notification will be confined to those few officers whose work entails close and regular contact with the security and intelligence services.

## Arrest and Search Powers

6. The effect of the new Act is to preserve police powers of arrest and the provisions for issuing search warrants as they are defined in the Police and Criminal Evidence Act, 1984 in respect of offences under the Official Secrets Act, 1911 and 1920. The expectations are the lesser offences in Sections 8(1), 8(4) and 8(5) of the new Act, which concern improper retention of, or failure to safeguard, protected material, these are not arrestable offences and there are no powers to issue search warrants for these offences.
7. Existing legislation controlling the disclosure of information from police records is not affected or limited by the Official Secrets Act. Such legislation includes the Data Protection Act, 1984, protecting personal information held on police computers; the Rehabilitation of Offenders Act, 1974, restricting disclosure of criminal records; and the Prevention of Corruption Act, 1906, under which disclosure of police records in response to a bribe or other inducement may constitute an offence. Neither does the implementation of the Act affect the established discretion of Chief Officers of Police to protect information about criminal investigations which is not required for court proceedings.

## Lawful Disclosure

8. It should also be noted that, under Section 7(3) of the Act, a disclosure is lawful if it is made to a Crown Servant for the purposes of his functions as such.

# 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 change, 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 which 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 those 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 to 3), its disclosure was or was likely to be harmful and he knew or had reasonable cause to believe that it would be. This Section also makes it an offence to disclose information which 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 Sections 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 which 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 which 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 9

- 24. Section 9 provides that prosecutions may only be brought in England, Wales and Northern Ireland with the consent of the Attorney-General, with the exception of certain cases brought under Section 4 (namely information likely to result in an offence or other related consequences) where the consent of the Director of Public Prosecutions is sufficient. In Scotland the Lord Advocate is responsible for all prosecutions.

## 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 £2,000) 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 £2,000) or both.

## Section 11

- 26. Section 11 provides that offences under the Act, except the summary offences in Section 8(1), (4) and (5), are arrestable offences as defined in Section 24(2) of the Police and Criminal Evidence Act, 1984; and preserves the powers of search by warrant contained in Section 9(1) of the Official Secrets Act, 1911. the procedures for seeking the authority of a circuit judge to search for excluded and special procedure material (which include among other things medical records and certain journalistic material), as provided in the Police and Criminal Evidence Act, will continue to apply to investigations under the new Act.