

Official Secrets Act

What is official information?

This means any **information, document or article** which a Crown servant or a government contractor has or has had in his or her possession by virtue of his or her position as such.

What are the 6 specified categories protected by the Act?

It is an offence for a crown servant or government contractor to disclose official information in any of the following categories if the disclosure is made **without lawful authority** and is **damaging**. The categories are

- security and intelligence
- defence
- international relations
- foreign confidences
- information which might lead to the commission of crime
- the special investigation powers under the Interception of Communications Act 1985 and the Security Service Act 1989.

When is a disclosure damaging?

The Act sets a different test or tests of damage for each of the 6 categories of information. For an offence to be committed under the Act, the disclosure of information must in general have damaged the national interest in the particular way, or ways, specified in the Act for the category of official information in question. It is ultimately for the court to decide, when the case comes to trial, whether damage has in fact occurred.

When is a disclosure made without lawful authority?

Crown servants may disclose official information only in accordance with their official duty. Government contractors may do so only in accordance with an official authorisation or for the purposes of their functions as government contractors and without contravening an official restriction. In any other circumstances a disclosure is made without lawful authority.

Who will be notified?

A person may be notified only if his or her work is or includes work connected with the security and intelligence services, and the nature of the work is such that the interests of national security require that the person should be subject to section 1(1) of the Act.

What are the penalties for unauthorised disclosure?

Offences of unauthorised disclosure under the Act may be tried either on indictment in the High Court or Sheriff Court or summarily, in the Sheriff Court. The maximum penalties are 2 years' imprisonment or an unlimited fine, or both, if the offence is tried on indictment, and 6 months' imprisonment or a £2000 fine, or both, if the offence is tried summarily.

What about safeguarding information?

It is also an offence under the Act

- for a Crown servant, a government contractor or a notified person to fail to take reasonable care to prevent the unauthorised disclosure of a document or article which is protected by the Act
- for a Crown servant or notified person to retain such a document or article contrary to official duty
- for a government contractor or a member of the public to fail to comply with an official direction for the return or disposal of such a document or article.

These are summary offences, triable in Scotland by a Sheriff Court. The maximum penalties are 3 months' imprisonment or a £2000 fine or both.

Section 1 of the Official Secrets Act 1911

The 1989 Act does not affect the operation of section 1 of the Official Secrets Act 1911, which protects information useful to an enemy. The maximum penalty for offences under section 1 of the 1911 Act is 14 years' imprisonment.

What about members of the public?

If a member of the public - or any other person who is not a Crown servant or government contractor under the Act - has in his or her possession official information in one of the protected categories, and the information has been

- disclosed without lawful authority; or
- entrusted by a Crown servant or government contractor on terms requiring it to be held in confidence;

it is an offence to disclose the information without lawful authority.

It is also an offence to make a damaging disclosure of information relating to security or intelligence, defence or international relations which has been

- communicated in confidence to another State or an international organisation and
- the information has come into a person's possession without the authority of that State or organisation.

Is it an offence to disclose means of access to protected information?

It is an offence for anyone to disclose official information which it would be reasonable to expect might be used to obtain access to information protected by the Act.

What about the security and intelligence services?

For

- present and former members of the security and intelligence services and
- people who have been notified in writing that they are subject to section 1(1) of the Act

it is an offence to disclose without lawful authority any official information about security or intelligence. There is no damage test.