

Nationality Instructions

Procedural section

The Official Secrets Act 1989

1. The Official Secrets Act 1989, which came into force on 1 March 1990, replaced s.2 of the Official Secrets Act 1911, under which it was a criminal offence to disclose any official information without lawful authority.

2. Under the 1989 Act, it is an offence for a Crown servant, Government contractor or member of the public who has, or has had, official information in his possession, 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

3. Meaning of "official information"

3.1 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.

4. Damaging disclosure

4.1 The 1989 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 1989 Act, the disclosure of information must in general have damaged the national interest in the particular way, or ways, specified in the 1989 Act for the category of official information in question. It is ultimately for the jury to decide, when the case comes to trial, whether damage has in fact occurred.

5. Disclosure without lawful authority

5.1 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 other purposes of their functions as Government contractors and without contravening an official restriction. In any other circumstances, a disclosure is made without lawful authority.

5.2 It is an offence for a member of the public to disclose official information in one of the protected categories without lawful authority where that information:

- has already been disclosed without lawful authority, or
- has been entrusted by a Crown servant or Government contractor on terms requiring it to be held in confidence

5.3 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

has come into a person's possession without the authority of that State or organisation.

6. 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 1989 Act.

7. For present and former members of the security and intelligence services, and people who have been notified in writing that they are subject to s.1(1) of the 1989 Act, or whose work is connected with the security and intelligence services, it is an offence to disclose without lawful authority any official information about security and intelligence. There is no damage test.

8. Offences of unauthorised disclosure under the 1989 Act may be tried either on indictment by the Crown Court, or summarily by a magistrates' 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 £5,000 fine, or both (if the offence is tried summarily).

9. It is also an offence under the 1989 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 1989 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 England and Wales by a magistrates' court. The maximum penalties are 3 months' imprisonment or a £5,000 fine or both.

10. Section 1 of the Official Secrets Act 1911

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

11. It should be borne in mind that the unauthorised disclosure of official information may still be a disciplinary matter, even if it is not caught by the criminal law. When in doubt, advice should always be sought.

12. See also DISCLOSURE OF INFORMATION.