

Journalists who obtain leaked official material could be sent to prison under new proposals

 [telegraph.co.uk/news/2017/02/11/journalists-obtain-leaked-official-material-could-sent-prison/](https://www.telegraph.co.uk/news/2017/02/11/journalists-obtain-leaked-official-material-could-sent-prison/)

Lisa Kjellsson Robert Mendick , Chief Reporter

11/02/2017

Campaigners have expressed outrage at new proposals that could lead to journalists being jailed for up to 14 years for obtaining leaked official documents.

The [major overhaul of the Official Secrets Act](#) – to be replaced by an updated Espionage Act – would give courts the power to increase jail terms against journalists receiving official material.

The new law, should it get approval, would see documents containing “sensitive information” about the economy fall foul of national security laws for the first time.

In theory a journalist leaked Brexit documents deemed harmful to the UK economy could be jailed as a consequence.



Head of Britain's Secret Intelligence Service Alex Younger Credit: AP

One legal expert said the new changes would see the maximum jail sentence increase from two years to 14 years; make it an offence to “obtain or gather” rather than simply share official secrets; and to extend the scope of the law to cover information that damages “economic well-being”.

“It is clearly an attempt to criminalise ordinary journalism.” Jim Killock, chief executive of the Open Rights Group

John Cooper QC, a leading criminal and human rights barrister who has served on two law commission working parties, added: “These reforms would potentially undermine some of the most important principles of an open democracy.”

Jodie Ginsberg, chief executive of Index on Censorship, said: “The proposed changes are frightening and have no place in a democracy, which relies on having mechanisms to hold the powerful to account.”

"It is unthinkable that whistle blowers and those to whom they reveal their information should face jail for leaking and receiving information that is in the public interest."

Her organisation has accused the Law Commission, the Government's statutory legal advisers, of failing to consult fully with journalists before making its recommendations in a 326-page consultation published earlier this month.

"It is shocking that so few organisations were consulted on these proposed changes given the huge implications for public interest journalism in this country," said Ms Ginsberg.

The Law Commission sought advice from media groups including Guardian Media as well as civil liberties groups including Liberty and Open Rights Group.

Other groups consulted included the intelligence agencies MI5 and MI6 as well as several government departments and senior politicians and lawyers.

"It is fundamentally un-British to try to control journalists in this way. It is completely unreasonable" Jim Killock, chief executive of the Open Rights Group

Jim Killock, chief executive of the Open Rights Group, said: "It is clearly an attempt to criminalise ordinary journalism. The idea seems to be to criminalise the act of handling leaked documents which would prevent the public from knowing when the government is breaking the law.

"It is fundamentally un-British to try to control journalists in this way. It is completely unreasonable to equate any leak of secret information as an act of espionage."

The Law Commission's proposed changes would replace four official Secrets Acts dating back to 1911. The changes do not allow for a statutory public interest defence.

The Law Commission recommendations state that there should be "no restriction on who can commit the offence," including hackers, politicians and journalists.

The new proposals will now go out to further consultation which will be open until April 3.

Conservative [MP Damian Collins, chairman of the Culture, Media and Sport Committee](#), said: "We need to look at these proposals very carefully. Whistle blowing can be in the national interest.

"We need to ensure that we get the balance right between protecting sensitive official information and allowing debate about facts where there is a clear and overwhelming national interest."

A Law Commission spokesman said it was "both misleading and incorrect" to suggest journalists were at any greater risk under the planned law changes.

The spokesman added: "The current offences contained in the Official Secrets Act 1911 are broad. We are seeking views on how the law could meet 21st century challenges whilst also ensuring people don't inadvertently commit serious offences.

"Our provisional recommendations make a number of suggestions to improve the current laws around the protection of official data and we welcome views in our open public consultation."

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Exclusive Spies and civil servants who leak secrets face 14 years in jail in first overhaul of the Official Secrets Act for 100 years



By **Christopher Hope**, CHIEF POLITICAL CORRESPONDENT
2 FEBRUARY 2017 • 12:01AM

Spies and civil servants who leak national security secrets face up to 14 years in jail, in a major overhaul of the Official Secrets Act in the face of the growing threat from Russia, the Daily Telegraph has learnt.

Foreign spies who steal information from the Government and leak it overseas, or those who snoop on British embassies, will also face prosecution in British courts for the first time, under plans to be considered by ministers.

Under the proposals, which are published today, officials who leak “sensitive information” about the British economy that damages national security could also be jailed.

MI6's headquarters CREDIT: JUSTIN KASE ZNINEZ / ALAMY/JUSTIN KASE ZNINEZ / ALAMY

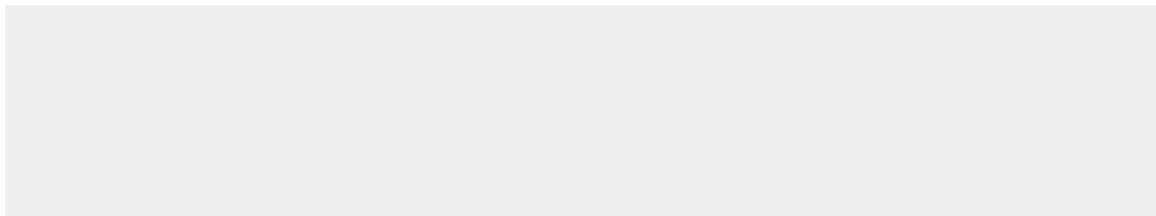
The proposals from Government’s independent law advisers also advise that the four Official Secrets Acts, which back to 1911, are scrapped and replaced with a modernised Espionage Act and a data disclosure law.

Experts said the Law Commission’s plans – drawn up after a request from the Cabinet Office and in consultation with MI5 and MI6 as well as civil liberty groups - were vital to help Britain tackle the snooping threat from Russia.

The review says: “It is crucial that the United Kingdom has a robust legislative response that meets the challenges posed by espionage in the 21st century.” Current legislation is “not capable of reflecting the potential harm and culpability that may arise in a serious case” of stealing state secrets, it says.

Under the Official Secrets Act 1989, an “unauthorised disclosure” of classified information carries a maximum sentence of just two years in jail – the same penalty as for a data breach by a National Lottery worker.

The review is the first time that official secrets legislation has been overhauled in a century amid concerns that it is “archaic” and has failed to keep pace with advances in technology and modern threats.





Former US intelligence contractor and whistle blower Edward Snowden CREDIT: LOTTA HARDELIN/ LOTTA HARDELIN

It says: “In the digital age, the volume of information that can be disclosed without authorisation is much greater than when the Official Secrets Act 1989 was originally drafted.” This meant that “the ability to cause damage to the national interest and the risk of such damage occurring has also increased”.

Pointing out that the maximum jail term for such breaches in Canada is 14 years in jail, it adds: “We provisionally conclude that the maximum sentences currently available for the offences contained in the Official Secrets Act 1989 are not capable of reflecting the potential harm and culpability that may arise in a serious case.”

Writing in today’s Daily Telegraph, Professor David Ormerod, the Law Commissioner who drew up the reforms, said at present Britain’s “principal legal protection in the United Kingdom against espionage” was the 1911 Official Secrets Act.

He says: “Some offences in the 1911 Act are focussed narrowly on protecting specific locations, but are mainly related mainly to sites of munitions of war.

“But what about an embassy abroad? Or a data centre? The legislation needs to protect against modern threats.”





Lord Carlile of Berriew CREDIT: ABBIE TRAYLER-SMITH/ ABBIE TRAYLER-SMITH

Lord Carlile of Berriew, the former reviewer of anti-terrorism legislation, added that the reforms would help combat “hacking by either the Russians or people who disclose what they have hacked to the Russians, or anybody with malign motives started to hack into British national security materiel”.

The overhaul comes after Alex Younger, the head of MI6, warned in December that cyber attacks and attempts to subvert democracy by states such as Russia posed a fundamental threat to British sovereignty.

And it comes in the wake of the Edward Snowden case which saw the former US defence contractor copied classified information from the National Security Agency, before fleeing fled to Hong Kong where he passed the data to journalists. He eventually flew to Russia where he is thought to reside today.

The 324-page review suggests that anyone who leaks “sensitive information” that damages the economy could be jailed under the Official Secrets Act.

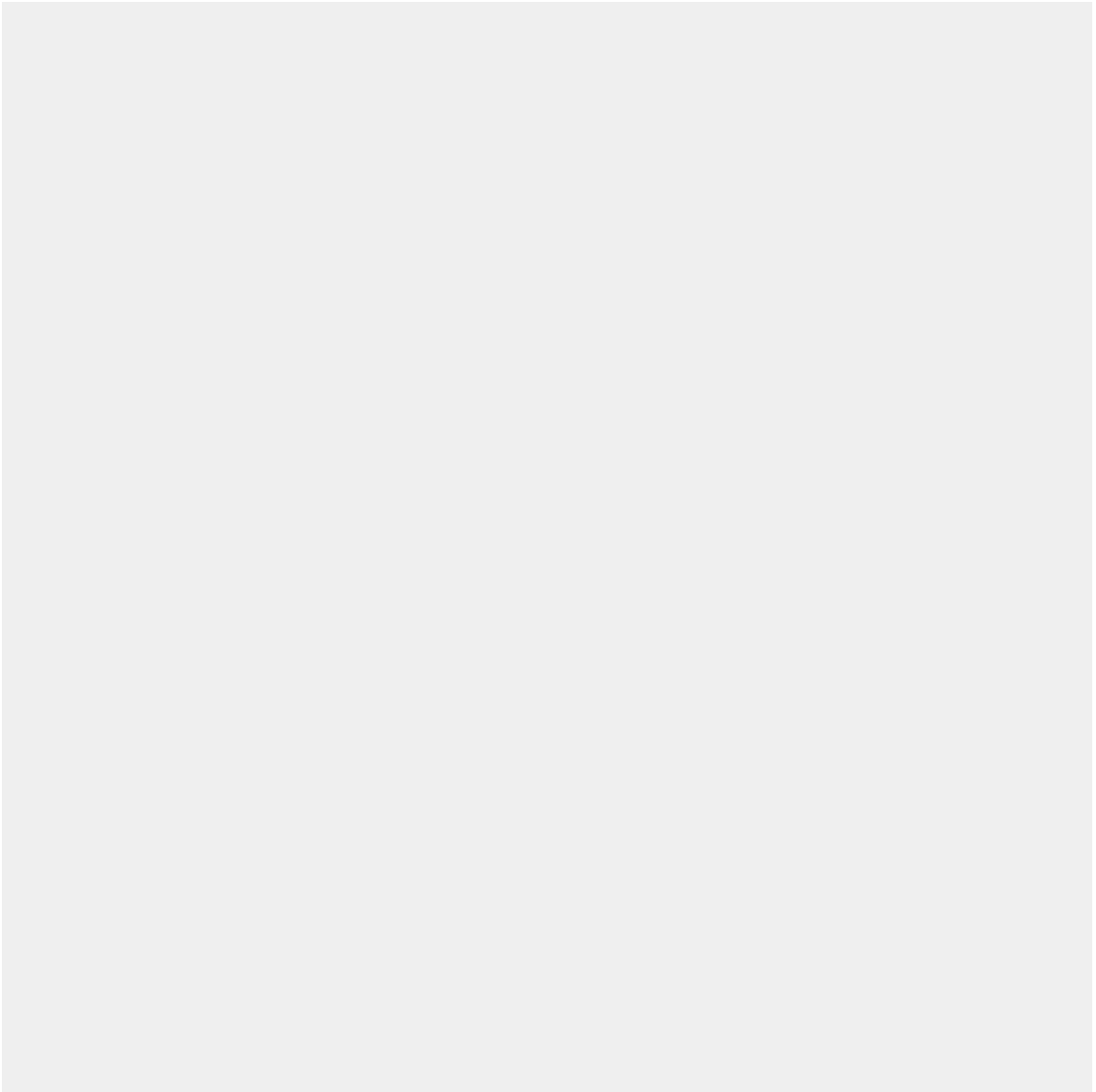
Currently official secrets legislation is limited to breaches which jeopardise security, intelligence defence, confidential information and international relations.

The review suggests the law is expanded to cover “information that affects the economic well-being of the United Kingdom in so far as it relates to national security”.

Foreigners who leak information overseas that damages British national security could also be prosecuted in the UK for the first time.

This would include a non-British citizen seconded to a government department and in that role have access to information that relates to security and intelligence”.

Currently, they can only be prosecuted if the leak is by a British national or happens on UK soil.



MI5's offices in central London CREDIT: NEIL MUNNS/PA

The Official Secrets Act from 1911, 1920 and 1939 will be replaced with the new Espionage Act.

The most recent Official Secrets Act 1989 will be replaced with a new data disclosure law.

Changes include dropping use of the word “enemy” to describe foreign

powers which are hostile to the UK to allow prosecutions for leaking of information to terrorist groups.

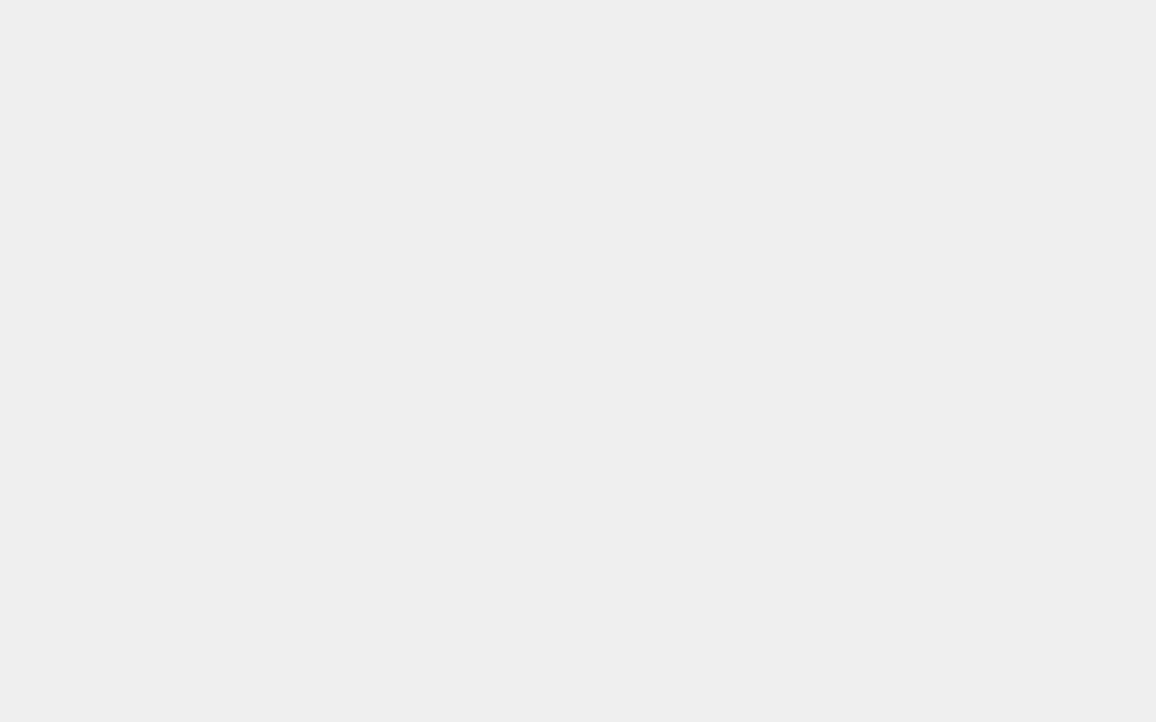
“Anachronistic” jargon to describe secrets used in the earlier legislation like “sketches”, “plans”, “models”, “passwords” and “code words” will be replaced with the more generic “information”.

A Government spokesman said: “We welcome the important work undertaken by the Law Commission, at the request of Government.

“As the work is ongoing and no final conclusions have been made, it would be inappropriate to comment at this stage.” A public consultation on the plans runs until April 3, after which the Government will draw up a draft Bill for the Government to consider.

The Law Commission is a non-political independent body, set up by Parliament in 1965 to keep all laws under review, and to recommend reform where it is needed.

Since the Commission was established in 1965, 73 per cent of its reforms have been accepted or implemented in whole or part by the Government.



Alex Younger, the head of MI6 CREDIT: FOTOWARE FOTOSTATION/ FOTOWARE FOTOSTATION

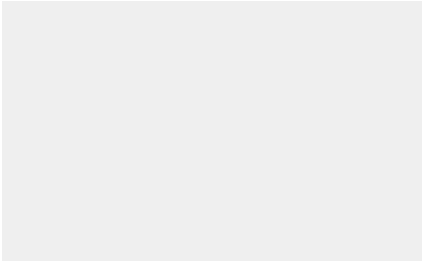
Overhauling the Official Secrets Act – the Law Commission’s proposals

- Civil servants who leak files of state secrets could be jailed for up to 14 years. Currently the maximum term is two years, under the Official Secrets Act 1989
- Official secrets legislation to be expanded to cover “information that affects the economic well-being of the United Kingdom in so far as it relates to national security”
- Foreigners who leak classified information overseas that damages British national security could be prosecuted in the UK for the first time
- Dropping the use of the word “enemy” to describe foreign powers which are hostile to the UK to allow prosecutions for leaking of information to terrorist groups
- “Anachronistic” jargon to describe secrets in law like “sketches”, “plans”, “models”, “passwords” and “code words” to be replaced with the more generic “information”
- The Official Secrets Acts 1911, 1920 and 1939 to be replaced with a modernised Espionage Act
- The Official Secrets Act 1989 to be replaced with a data disclosure law amid concerns that it is "archaic" and has failed to keep pace with advances in technology
- Prosecutors no longer to have to prove damage to national security to secure a conviction for disclosure of classified information
- Spies and civil servants to be allowed “to seek authority” to release confidential information
- An offence is committed if the defendant “knew or had reasonable grounds to believe his or her conduct was capable of benefitting a foreign power”

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Reforms to the Official Secrets Act are 'once in a century opportunity' to modernise anti-spying laws, says Law Commissioner David Ormerod



MI6's headquarters on the River Thames CREDIT: JUSTIN KASE ZNINEZ / ALAMY/ JUSTIN KASE ZNINEZ / ALAMY

By **David Ormerod**, LAW COMMISSIONER

2 FEBRUARY 2017 • 12:01AM

Protecting official data is important because public servants often have access to information that is vital to Britain's economic and national security.

That's why in 2015 the Cabinet Office, on behalf of the Government, asked the Law Commission to review the laws that protect official information to make sure that our security, was fit for the 21st century.

The Law Commission is independent and we make suggestions based upon evidence. We believe that this independence is crucial to ensuring public confidence in our conclusions.

We've scrutinised the law and consulted widely with government, lawyers, the media and human rights organisations.

For us, it's about getting this right. This is a once in a century opportunity to conduct a wholesale review, and our comprehensive consultation paper reflects that.

Currently the Official Secrets Act 1911 provides the principal legal protection in the United Kingdom against espionage, despite the fact it was enacted in the run up to the First World War.

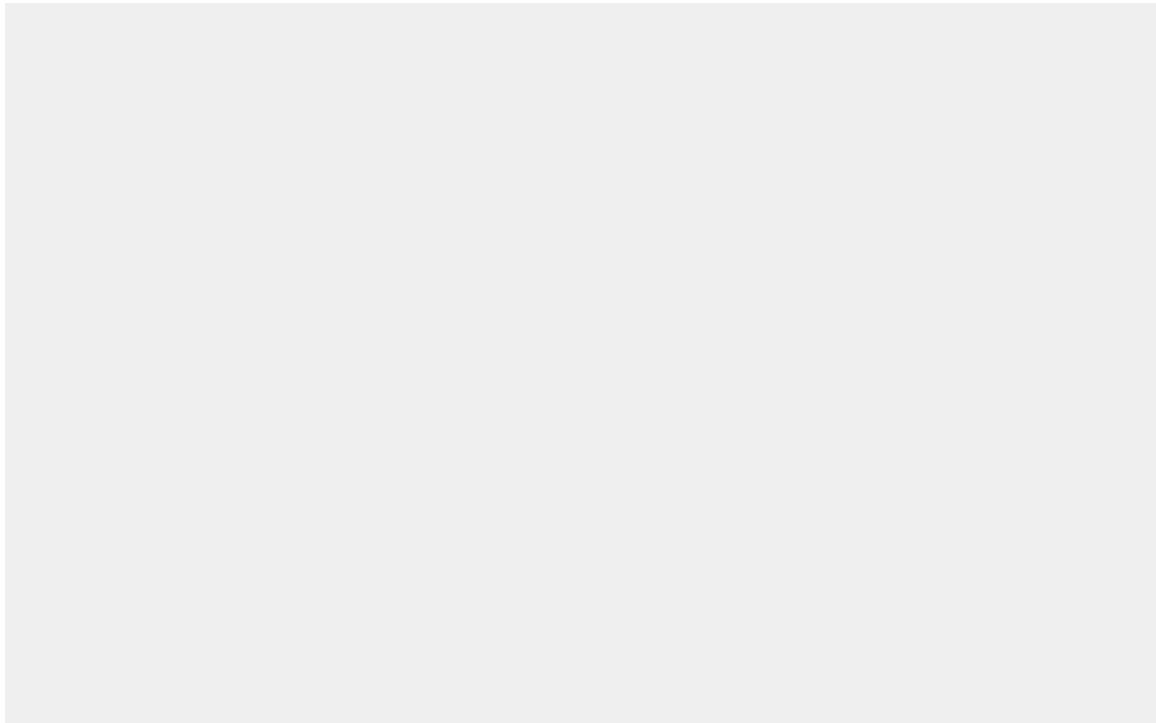
Since then it has been subject to very little independent scrutiny. So how do we know that it has kept pace with the modern world?

Before the digital era, anyone engaging in espionage would be limited as to how much information they could access. But now online communications and storage means the volume of information and associated risk is of a very different scale.

Some offences in the 1911 Act are focussed narrowly on protecting specific locations, but are mainly related mainly to sites of munitions of war. But what about an embassy abroad? Or a data centre? The legislation needs to protect against modern threats.

We also want to simplify and clarify the law. The law should move on from its dated focus on terms like "code words" or "sketches" so that it's future

proofed and keeps Britain secure in the 21st century.



MI5 HQ CREDIT: HORACIO VILLALOBOS/ HORACIO VILLALOBOS

We have also reviewed the offences in the 1989 Act. We acknowledged that there is a major difference between knowingly disclosing information which could damage UK interests and doing so accidentally. The law should reflect that.

The law should also reflect the gravity of the offences. Currently most offenders under the 1989 Act could only receive a maximum two years' imprisonment.

To put that into perspective, if you work for the National Lottery Commission and disclose people's personal data you could be faced with the same maximum sentence.

Let me be clear – our proposals aren't about gagging people who have real concerns. In fact we want them to be acted on. We suggest that members of the security and intelligence agencies should have a direct reporting mechanism to someone independent of their agency.

And that they would in turn have the power to investigate and report to the Prime Minister about what they have uncovered.

We're consulting widely on our proposals and want to hear your views. In a

century the world has changed. We think it's time laws around protecting official information did too.

Professor David Ormerod QC has been the Law Commissioner for criminal law since 2010 and is a Professor of Criminal Justice at University College London

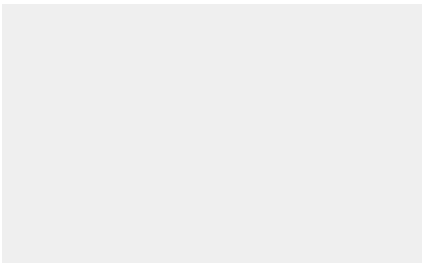
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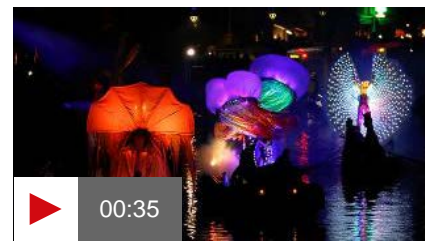
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