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THE BRITISH OFFICIAL SECRETS ACT
AN EXAMINATION

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THE BRITISH OFFICIAL SECRETS ACT

An Examination

by

JACK ROBINSON

INTRODUCTION

All of us have heard comments about the British Official Secrets Act and have heard murmurs -- not to mention outright recommendations -- about adoption of such a law here.

We are now beginning to operate under a new Executive Order, with an extensively changed but evolving set of regulations. It seems timely, therefore, to look more closely at the British Act, to consider whether some of its provisions would strengthen proper application of Executive Order 11652 and its implementing regulations.

The purpose of this paper, therefore, is to present the available information on the British law, discuss some facts about its relationship to our own, and offer some observations about its effect on operations. The paper is a "highlight," not intended as a discursive exposition.

Another purpose of this paper is to make the Act available for easier access. Recommendations concerning the advisability of adopting specific provisions of the Act are beyond the scope of this paper.

THE ACT

The first point to establish is that the "Act" is not a single law at all. Properly, it is "The British Official Secrets Acts, 1911 to 1939."¹ This point is not purely semantic, as anyone who reflects on the range of years covered will agree. We shall examine the major provisions as they have changed.

The law is found in the *Laws of England*² which is the closest approximation to our Code (statutes are not codified in the United Kingdom). The following topics are covered:

- Penalties for spying
- Meaning of prohibited place
- Effect of communication with foreign agents
- Communication, etc., of information
- Communication of information relating to munitions
- Wrongful receipt of sketch, etc.
- Harboring of spies
- Gaining admission to prohibited place, etc.
- Wrongful retention, etc., of official documents
- Obstruction of police, etc., in prohibited places
- Power of police to obtain information
- Offences by corporations
- Attempts, incitements, etc.
- Punishment
- Consent of law officer
- Powers of arrest

¹ Footnotes follow the text.

- Exclusion of public during hearing
- Production of telegrams
- Accommodation addresses
- Extent of Acts and place of trial
- Laws of British possessions
- Communication of information concerning atomic energy

The last provision is, of course, of more recent origin than 1939. In this connection, it is interesting to note that the first formal act of this type,³ contained only the following provisions:

- Disclosure of information
- Breach of official trust
- Punishment for incitement or counseling to commit offence
- Expenses of prosecution
- Saving for laws of British possessions
- Extent of Act and place of trial of offence
- Restriction of prosecution
- Interpretations

Examining then the Act of 1911⁴ which repealed the Act of 1889, one finds:

- Penalties for spying
- Wrongful communication etc., of information
- Definition of prohibited place
- Power to arrest
- Penalty for harbouring spies
- Restriction on prosecution
- Search Warrants
- Extent of Act and place of trial of offence
- Saving for laws of British possessions
- Interpretation

It is not surprising that the Act of 1911 added to the detail and definition (e.g., the meaning of prohibited place) and added provisions. Among the latter were: Power of arrest, Penalty for harbouring spies, Search warrants, and, the most notable from our view, the one establishing "Wrongful receipt" as an offense. It thus became an offense under the Act for a person to receive prohibited information, just as it was for a person to pass such information, unless the receiver could prove that the receipt was contrary to his desire.⁵

The Act of 1920⁶ provided further extensions and amplification. Its sections included:

- Unauthorized use of uniforms; falsification of reports, etc.
- Communication with foreign agents to be evidence, etc.
- Interfering with officers of the police, etc.
- Power to require the production of telegrams
- Registration and regulation of persons... receiving postal packets
- Powers of police in arrest
- Attempts, incitements, etc.
- Provisions as to trial and punishment of offences

The main elements in these sections relate to detailed

definition of improper use of uniforms and identification in connection with obtaining information or access to a "prohibited place", a statement of details for establishing evidence of communication with a foreign agent, establishment of a series of records to be kept by persons in the business of receiving "postal packets" for transshipment; and reinstatement of a section pertaining to incitement to commit an offense under the Act. Such a provision, it might be observed, had been in the Act of 1889⁷ but not in the Act of 1911.

Undoubtedly, the changes reflected experience gathered in one way or another during World War I, as was noted by Viscount Peel, the Under-Secretary of State for War, when introducing the bill for a second reading in the House of Lords:

"My Lords, this Bill is intended to amend the Official Secrets Act of 1911. Of course, great changes have taken place in espionage during the war, and great advances, if advances they may be called, have occurred in that somewhat doubtful art, and the experience of countering espionage which we have had during the war is embodied in the amendments contained in this Bill. . . ."⁸

Further, it appears that many of the amendments had appeared as regulations under the Defence of the Realm Act, as reflected by Viscount Burnham during debates:

"...I quite see it may be necessary, with the experience of the war behind us, to embody by way of Statute those provisions which have been extremely useful during the war under the Regulations made by virtue of the Defence of the Realm Act. . . ."⁹

The Act did not, however, basically change the provision pertaining to the "wrongful receipt" although it did add a provision, subject to considerable debate, pertaining to "wrongful retention."

Finally, the Act of 1939¹⁰ extended the provisions of the collective Acts to Northern Ireland and rewrote section 6 of the Act of 1920. That section describes the procedures to be followed in obtaining information from those believed to have it about offenses or suspected offenses.

Though no Secrets Act has been written since 1939, provisions covering production and use of atomic energy were added to the Law by The Atomic Energy Act of 1946.¹¹

Another aspect, worth noting, is that some provisions of the Secrets Act are incorporated in current laws. Two recent ones are The Radiological Protection Act of 1970 and the Civil Aviation Act of 1971.¹²

An excerpt from the latter will illustrate the continuing application

"Section 61 Official Secrets

(1) For the purposes of Section 2 of the Official Secrets Act of 1911 (which among other things relates to the wrongful communication of information) a member and an employee of the

Authority shall be deemed to hold an office under Her Majesty and a contract with the Authority shall be deemed to be a contract with Her Majesty.

(2) For the purposes of paragraph (c) of section 3 of said Act of 1911 (under which the Secretary of State may by order declare any place belonging to Her Majesty to be a prohibited place for the purposes of that Act) a place belonging to or used for the purposes of the Authority shall be deemed to be a place belonging to Her Majesty. (3) Subject to the following subsection no person shall, except with the consent of and in accordance with any conditions imposed by the Authority, be entitled to exercise any right of entry (whether arising by virtue of a statutory provision or otherwise) upon a place which by virtue of the preceding subsection is a prohibited place for the purpose of the said Act of 1911."

These then, are the provisions of the British Official Secrets Acts, 1911 to 1939 as carried forward into current law.

UNITED STATES LAW

In this country the first of the Acts of this type was passed in 1911.¹³ It is perhaps not common knowledge that it was drawn from the British Act of 1889, as the discussion in the House attendant on passage of the law reveals:

"Mr. BENNET of New York. I would like to ask the gentleman if the language in this bill is substantially in the form of foreign statutes Mr. PARKER. It is almost exactly in the form of the English statute. We have stricken out the presumption of intent, we thought that was not fair." ¹⁴

An examination of the texts of the two clearly establishes the relationship even though the formats differ and neither "Her Majesty" nor the British possessions enter the discussion. In the comment by Mr. Parker, that the U.S. law had "stricken out the presumption of intent," he apparently refers to the Section of the 1889 Act relating to providing such information to a foreign source

(3.) Where a person commits any act declared by this section to be a misdemeanour, he shall, if he *intended* (emphasis supplied) to communicate to a foreign state any . . . or if he communicates the same to any agent of a foreign state . . ."¹⁵

Our law of 1911, on the other hand, says only:

"SEC 2. That whoever, having committed any offense defined in the preceding section, communicates or attempts to communicate to any foreign government, or to any agent or employee thereof, any. . . ."¹⁶

As evident from the fact that Public Law 470 passed on 3 March 1911 and the British Act of 1911 on 25 August, they were at the time in the process of preparing the Act of 1911 which repealed the Act of 1889. The relation between the Act of 1911 and our "Espionage Act" of 1917 is also evident, but so are some differences. For example, it is in the Act of 1911 that the definition of "prohibited place" appears. By inference, certain

named places in the 1889 Act and in our own 1911 law certainly would be considered as intended of limited access. But, in the 1917 law we find essentially the addition of the "prohibited place:"

"Section 6. The President in time of war or in case of national emergency may by proclamation designate any place other than those set forth in subsection (a) of section one hereof in which anything for the use of the Army or Navy is being prepared or constructed or stored as a prohibited place for the purposes of this title: *Provided*, That he shall determine that information with respect thereto would be prejudicial to the national defense."¹⁷

Other portions of this Title are quite similar to those of the Law of 1911, which was repealed by Title I of the 1917 law.¹⁸ Aspects of procedure under law and other matters included in the British Act, in the U.S. are found in appropriate sections of the United States Code. In major respects, then, the provisions of the British Official Secrets Acts are found in United States law; one, of course, is not—namely, the part that makes it unlawful to receive official secrets.

SOME OBSERVATIONS

Clearly, the Acts are part of the fabric of current British law, and aspects of orders issued under them can be found. *Halsbury's Statutory Instruments* is similar to our Code of Federal Regulations. One portion is concerned with Official Secrets.¹⁹

Of probably greater interest, however, are views expressed over a period of time relating to the one notable aspect that does not appear in U.S. law—the designation of receipt of prohibited information as an offense. A few examples may be illuminating

In the House of Commons during the discussions and debates incident to the passage of the Act of 1889, one Member commented:

"Sir G. CAMPBELL (Kirkcaldy): I do not wish to oppose this Motion (reading the bill a third time preliminary to the final passage), but I must say it seems to me that the discussion of some measures in this House is scamped. This Bill has not been sufficiently discussed, and I venture to say it will be of no practical use until the Government have the courage to go further and punish not only those who steal information, but the receivers of the stolen goods—the newspapers. Until the Government deals with the press, nothing in connection with this matter will be satisfactory."²⁰

During the same discussion, and reminiscent of many comments heard in this country today, was the following:

"Mr. HANBURY (Preston): ...I should also like to know what is meant by a "Department?" For instance, in the Admiralty, what is the Department? Is it the First Lord. . .When we are passing a measure of this kind which inflicts punishment not only on the person who gives official information, but on those who take it, we ought to have the clearest information as to what can possibly be contrary to

the interests of a Department. . .when the Department is acting for the true benefit of the State. . .but looking at the way the Departments have been managed lately, I do not think we should render it illegal to obtain information as to that management. . .If the words to which I object are retained. . .A good many of the Departments will not be kept in that good order they ought to be in if we do not obtain more information about them in the future than we have been able to obtain in the past."²¹

Then, with respect to effects on the press and in a not totally dissimilar vein, in the debates attendant upon passage of the Act of 1920, Viscount Burnham, the prestigious publisher of the *Daily Telegraph*, expressed the following apprehensions concerning a clause relating to "wrongful retention"

"...What I wish to bring before your Lordships is this. In the second subsection of Clause 1 a series of new offences is created, and the principal one is that any person who is in possession of any official document, the return of which is demanded by a competent authority, is guilty of a misdemeanour. . .He is, therefore, in a very grave position. I do not know a single editor of a national paper who from time to time has not been in possession of official documents. . .and which it may be inconvenient to the Minister of the responsible Department should have gone out. I do not believe any editor would be safe if the Bill were passed in its present form. . .and I have not such unlimited faith in Government Departments that I wish to give them the sort of autocratic powers that have no doubt been exercised. . .in other countries, which have treated official documents as if they were inspired and sacrosanct."²²

It must be observed, of course, that while modifications were made in some of these points, the main thrust was enacted and remains law. Clearly these aspects are matters of prime importance in the United States. More recent comments, much in point, were made by Lord Shawcross, a former Attorney General of the United Kingdom, former member of the Permanent Court of Arbitration at the Hague, and, at the time of writing, Chairman of JUSTICE, the British branch of the International Commission of Jurists, in *Encounter* in 1966:

State Secrets—I turn now to the publication in newspapers of so-called official or government secrets: information in the possession of Departments of State which they do not care to disclose or information about matters taking place within Departments. In Britain there is legislation known as the Official Secrets Acts, and there are other statutes which have somewhat similar effect in forbidding disclosure in particular cases. This is not a matter which we can expect to be left entirely to the discretion of the newspapers. . .the fact remains that not every newspaper editor can at every moment be fully informed in every case whether or not

disclosure of some particular matter might be detrimental to the State. There must, therefore, be some degree of control by law. The important thing is to ensure that it does not go further than the necessity requires – and that indeed is a danger, for the moment that it is admitted to be right that some things should not be published, the matter becomes one of degree and those who seek to preserve secrecy in order perhaps to conceal mistakes or inefficiency in their Departments may push the restraint on publicity too far. There are perhaps four categories of cases in which it may be arguable that the public interest justifies a restraint on disclosures:

1. Information prejudicial to the security of the State – for instance, matters relating to defence or police.
2. Information prejudicial to the national interest – matters concerning foreign relations, diplomatic negotiations and, perhaps, matters affecting banking, currency and commodity reserves so far as they are matters for the state.
3. Information concerning matters of State, for instance in regard to an impending budget, the premature disclosure of which could provide unfair opportunities for private financial gain.
4. Information provided to Government Departments in regard to matters of State on the promise of non-disclosure.

In regard to these four matters, the realities of political life and of State interests justify a restraint on publication or, indeed, even on receipt of information without authority. In regard to these it is legitimate for the State to forbid disclosure or publication . . .²³

Lord Shawcross went on to discuss a means by which the system is made workable. A system of advisories called "D Notices" is made available through the official press and broadcasting company. These provide warning on matters of which the press may learn or hear as to their sensitivity in the sense of The Official Secrets Acts. He observes that these have no statutory or legal effect, but adds:

" . . . In practice this system has, at least in recent years, in general, prevented the Official Secrets Acts forming a serious restriction on the liberty of the Press in matters relating to National Security. . . ."²⁴

He observed further that some Departments are still prone to cause problems

" . . . But Departments not concerned with military security sometimes still continue to threaten the Press with dire consequences under the Act. . . ."²⁵

These problems appear similar to problems of some U.S. agencies which had original classifying authority, but whose operations could be only remotely related to security matters.

SUMMARY

At the beginning of the paper, the stated intention was to present a *precis* of the British Official Secrets Act. We have seen that it apparently differs from our law in only one respect – namely, receipt of prohibited (classified) information is an offense just as is obtaining, losing, or passing such information.

NOTES

¹ For the complete text of the Statutes, see appendix B, for the complete text of the Law, see appendix C.

² *Halsbury's Laws of England*, Third Edition, Butterworth & Co. Ltd., London, 1955.

³ The Official Secrets Act of 1889, *Public General Acts*, 52 & 53 Victoria, HMSO, London, 1889. For complete text, see appendix A.

⁴ The Official Secrets Act, 1911, *Halsbury's Statutes of England*, Third Edition, Vol 8, "Criminal Law," "Crown Proceedings," Butterworths, London, 1969.

⁵ The Official Secrets Act, 1911 (1&2 Geo 5 c. 28) s 2(2)

⁶ The Official Secrets Act, 1920 (10&11 Geo. 5 c. 75).

⁷ The Official Secrets Act, 1889 (52&53 Vict. c. 52), s 3

⁸ *The Parliamentary Debates*, Fifth Series, 10 & 11 George V, House of Lords, HMSO, London, 1920, Vol. 50, p 735

⁹ *ibid.*, p. 897.

¹⁰ The Official Secrets Act, 1939, (2&3 Geo. 6 c. 121).

¹¹ The Atomic Energy Act, 1946, (9&10 Geo 6 c. 80)

¹² *Halsbury's Statutes of England* Third Edition, Current Statutes Service Butterworths, London.

¹³ 36 Statutes 470, chapter 226. For complete text of the law see appendix D.

¹⁴ Congressional Record - House, 6 February 1911, 61st Congress, 3d Session, p 2030

¹⁵ The Official Secrets Act, 1889 (52&53 Vict c. 52), s 1(3)

¹⁶ 36 Statutes 470, Section 2

¹⁷ 40 Statutes 24, Title I.

¹⁸ *ibid.* It may be observed that this was an omnibus law of 12 titles; others dealing with such matters as Injuring Vessels Engaged in Foreign Commerce, Enforcement of Neutrality, Disturbance of Foreign Relations, Passports, etc., were included as well.

¹⁹ *Halsbury's Statutory Instruments*, Vol. 6, Part 4, Official Secrets, Butterworth & Co. Ltd., London, 1952.

²⁰ *Hansard's Parliamentary Debates*, Third Series, 52 & 53 Victoria, 1889, The Hansard Publishing Union, Ltd., London, 1889, Vol 337 p 322.

²¹ *ibid.* pp. 320-321

²² *The Parliamentary Debates*, Fifth Series, 10 & 11 George V, House of Lords, HMSO, London, 1920, Vol. 50, pp 896 897

²³ Lord Shawcross, "The Shadow of the Law," *Encounter*, Vol XXVI, No 3, March 1966, Rolls Publishing Co., Ltd., London, pp. 87-88.

²⁴ *ibid.*, p. 88

²⁵ *ibid.*

APPENDIX A

Official Secrets Act, 1889

An Act to prevent the Disclosure of Official Documents and Information. [26th August 1889.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows

1.—(1) (a) Where a person for the purpose of wrongfully obtaining information—

- (i) enters or is in any part of a place belonging to Her Majesty the Queen, being a fortress, arsenal, factory, dockyard, camp, ship, office, or other like place, in which part he is not entitled to be; or
- (ii) when lawfully or unlawfully in any such place as aforesaid, either obtains any document, sketch, plan, model, or knowledge of any thing which he is not entitled to obtain, or takes without lawful authority any sketch or plan; or
- (iii) when outside any fortress, arsenal, factory, dockyard, or camp belonging to Her Majesty the Queen, takes or attempts to take without authority given by or on behalf of Her Majesty, any sketch or plan of that fortress, arsenal, factory, dockyard, or camp; or

(b) where a person knowingly having possession of, or control over, any such document, sketch, plan, model, or knowledge as has been obtained or taken by means of any act which constitutes an offence against this Act at any time wilfully and without lawful authority communicates or attempts to communicate the same to any person to whom the same ought not, in the interest of the State, to be communicated at that time, or

(c) where a person after having been entrusted in confidence by some officer under Her Majesty the Queen with any document, sketch, plan, model, or information relating to any such place as aforesaid, or to the naval or military affairs of Her Majesty, wilfully and in breach of such confidence communicates the same when, in the interest of the State, it ought not to be communicated,

he shall be guilty of a misdemeanour, and on conviction be liable to imprisonment, with or without hard labour, for a term not exceeding one year, or to a fine, or to both imprisonment and a fine

(2.) Where a person having possession of any document, sketch, plan, model, or information relating to any fortress, arsenal, factory, dockyard, camp, ship, office, or other like place belonging to Her Majesty, or to the naval or military affairs of Her Majesty, in whatever manner the same has been obtained or taken, at any time wilfully communicates the same to any person to whom he knows the same ought not, in the interest of the State, to be communicated at that time, he shall be guilty of a misdemeanour, and be liable to the same punishment as if he committed an offence under the foregoing provisions of this section

(3) Where a person commits any act declared by this section to be a misdemeanour, he shall, if he intended to communicate to a foreign State any information, document, sketch, plan, model, or knowledge obtained or taken by him, or entrusted to him as aforesaid, or if he communicates the same to any agent of a foreign

State, be guilty of felony, and on conviction be liable at the discretion of the court to penal servitude for life, or for any term not less than five years, or to imprisonment for any term not exceeding two years with or without hard labour

2.—(1) Where a person, by means of his holding or having held an office under Her Majesty the Queen, has lawfully or unlawfully either obtained possession of or control over any document, sketch, plan, or model, or acquired any information, and at any time corruptly or contrary to his official duty communicates or attempts to communicate that document, sketch, plan, model, or information to any person to whom the same ought not, in the interest of the State, or otherwise in the public interest, to be communicated at that time, he shall be guilty of a breach of official trust

(2.) A person guilty of a breach of official trust shall

(a) if the communication was made or attempted to be made to a foreign State, he guilty of felony, and on conviction be liable at the discretion of the court to penal servitude for life, or for any term not less than five years, or to imprisonment for any term not exceeding two years, with or without hard labour, and

(b) in any other case be guilty of a misdemeanour, and on conviction be liable to imprisonment, with or without hard labour, for a term not exceeding one year, or to a fine, or to both imprisonment and a fine

(3) This section shall apply to a person holding a contract with any department of the Government of the United Kingdom or with the holder of any office under Her Majesty the Queen as such holder, where such contract involves an obligation of secrecy and to any person employed by a person or body of persons holding such a contract, who is under a like obligation of secrecy, as if the person holding the contract and the person so employed were respectively holders of an office under Her Majesty the Queen

3. Any person who incites or counsels, or attempts to procure, another person to commit an offence under this Act, shall be guilty of a misdemeanour, and on conviction be liable to the same punishment as if he had committed the offence

4. The expenses of the prosecution of a misdemeanour under this Act shall be defrayed in like manner as in the case of a felony

5. If by any law made before or after the passing of this Act by the legislature of any British possession provisions are made which appear to Her Majesty the Queen to be of the like effect as those contained in this Act, Her Majesty may, by Order in Council suspend the operation within such British possession of this Act or of any part thereof, so long as such law continues in force there and no longer, and such order shall have effect as if it were enacted in this Act

Provided that the suspension of this Act, or of any part thereof, in any British possession shall not extend to the holder of an office under Her Majesty the Queen who is not appointed to that office by the Government of that possession

The expression "British possession" means any part of Her Majesty's dominions not within the United Kingdom

6.—(1) This Act shall apply to all acts made offences by this Act when committed in any part of Her Majesty's dominions, or when committed by British officers or subjects elsewhere

(2) An offence under this Act, if alleged to have been committed out of the United Kingdom, may be inquired of, heard, and determined, in any competent British court in the place where the offence was committed, or in Her Majesty's High Court of Justice in England or the Central Criminal Court, and the Act of the forty-second year of the reign of King George the Third, chapter eighty-five shall apply in like manner as if the offence were mentioned in that Act, and the Central Criminal Court as well as the High Court possessed the jurisdiction given by that Act to the Court of King's Bench.

(3) An offence under this Act shall not be tried by any court of general or quarter sessions, nor by the sheriff court in Scotland, nor by any court out of the United Kingdom which has not jurisdiction to try crimes which involve the greatest punishment allowed by law.

(4) The provisions of the Criminal Law and Procedure (Ireland) Act, 1887, shall not apply to any trial under the provisions of this Act.

7 (1) A prosecution for an offence against this Act shall not be instituted except by or with the consent of the Attorney-General.

(2) In this section the expression "Attorney-General" means the Attorney or Solicitor General for England, and as respects Scotland, means the Lord Advocate, and as respects Ireland, means the Attorney or Solicitor General for Ireland, and if the prosecution is instituted in any court out of the United Kingdom, means the person who in that court is Attorney-General, or exercises the like functions as the Attorney-General in England.

8 In this Act, unless the context otherwise requires—

Any reference to a place belonging to Her Majesty the Queen includes a place belonging to any department of the Government of the United Kingdom or of any of Her Majesty's possessions, whether the place is or is not actually vested in Her Majesty.

Expressions referring to communications include any communication, whether in whole or in part, and whether the document, sketch, plan, model, or information itself or the substance or effect thereof only be communicated.

The expression "document" includes part of a document.

The expression "model" includes design, pattern, and specimens.

The expression "sketch" includes any photograph or other mode of representation of any place or thing.

The expression "office under Her Majesty the Queen," includes any office or employment in or under any department of the Government of the United Kingdom, and so far as regards any document, sketch, plan, model, or information relating to the naval or military affairs of Her Majesty, includes any office or employment in or under any department of the Government of any of Her Majesty's possessions.

9 This Act shall not exempt any person from any proceeding for an offence which is punishable at common law, or by military or naval law, or under any Act of Parliament other than this Act, so however, that no person be punished twice for the same offence.

10 This Act may be cited as the Official Secrets Act, 1889.

APPENDIX B

THE STATUTES

THE OFFICIAL SECRETS ACT, 1889

(1 & 2 Geo. 5 c. 2)

Arrangement of Sections

1. Penalties for spying
2. Wrongful communication, etc., of information
3. Definition of prohibited place
6. Power to arrest
7. Penalty for harbouring spies
8. Restriction on prosecution
9. Search warrants
10. Extent of Act and place of trial of offence
11. Saving for laws of British possessions
12. Interpretation
13. Short title

An Act to re enact the Official Secrets Act, 1889, with Amendments
[22nd August 1911]

(See Appendix A for text)

General Note. This Act, the Official Secrets Act 1920, p. 294, *post*, and the Official Secrets Act 1939, p. 337, *post* deal with espionage and the unauthorised obtaining or disclosure of official information.

Bank of England. The Bank of England Act 1946, s. 4 (4) (5), Vol. 2, p. 767, applies the provisions of the Official Secrets Acts 1911 to 1939, to certain directions and recommendations given by the Bank under that section.

Parliamentary Commissioner. Information obtained by the Parliamentary Commissioner or his officers in the course of or for the purposes of an investigation under the Parliamentary Commissioner Act 1967, Vol. 6, p. 822 may be disclosed for the purposes of any proceedings for an offence under the Official Secrets Acts 1911 to 1939 alleged to have been committed in respect of information obtained by the Commissioner or any of his officers by virtue of the Act of 1967 or for the purposes of an inquiry with a view to the taking of such proceedings, see s. 11 (2) (b) of the Act of 1967 Vol. 6, p. 829.

Diplomatic missions. The Official Secrets Acts 1911 to 1939 extend to a diplomatic agent dealing with documents on the diplomatic mission which employs him, see *R v A B* (1941) 1 K B 454.

Duties of chief officers of police. Chief officers of police must report offences alleged to have been committed against the Official Secrets Acts 1911 to 1939 in their districts to the Director of Public Prosecutions, see the Prosecution of Offences Regulations 1946, S.R. & O. 1946 No. 1467, reg. 6 (2) (6 Halsbury's Statutory Instruments, title Criminal Law (Part 1A) (ii)).

Official Secrets Acts 1911 to 1939. By the Official Secrets Act 1939, s. 2 (1), p. 337, *post* the following Acts may be cited together by this collective title and are to be construed as one: the Official Secrets Act 1911 (this Act), the Official Secrets Act 1920

Halsbury's Statutes of England
Third Edition, Volume 8,
Butterworths, London, 1969

(*Internal page references in text refer to this volume*)

p 294, *post*, the Official Secrets Act 1939, p 337, *post*. As to construction, see the note "Construed as one" to the Official Secrets Act 1920, s 11, p 302, *post*

Northern Ireland. This Act applies. As respects Northern Ireland s. 5 was repealed and ss. 6 and 10 were partly repealed by the Criminal Law Act (Northern Ireland) 1967, Sch. 2.

1 Penalties for spying

(1) If any person for any purpose prejudicial to the safety or interests of the State—

- (a) approaches [inspects, passes over] or is in the neighbourhood of, or enters any prohibited place within the meaning of this Act; or
- (b) makes any sketch, plan, model, or note which is calculated to be or might be or is intended to be directly or indirectly useful to an enemy; or
- (c) obtains, [collects records, or publishes,] or communicates to any other person [any secret official code word, or pass word, or] any sketch, plan, model, article, or note, or other document or information which is calculated to be or might be or is intended to be directly or indirectly useful to an enemy;

he shall be guilty of felony

(2) On a prosecution under this section, it shall not be necessary to show that the accused person was guilty of any particular act tending to show a purpose prejudicial to the safety or interests of the State, and, notwithstanding that no such act is proved against him, he may be convicted if, from the circumstances of the case, or his conduct, or his known character as proved, it appears that his purpose was a purpose prejudicial to the safety or interests of the State, and if any sketch, plan, model, article, note, document, or information relating to or used in any prohibited place within the meaning of this Act or anything in such a place [or any secret official code word or pass word], is made, obtained, [collected, recorded, published], or communicated by any person other than a person acting under lawful authority, it shall be deemed to have been made, obtained, [collected, recorded, published] or communicated for a purpose prejudicial to the safety or interests of the State unless the contrary is proved

2. Wrongful communication, etc., of information

(1) If any person having in his possession or control [any secret official code word, or pass word, or] any sketch, plan, model, article, note, document, or information which relates to or is used in a prohibited place or anything in such a place, or which has been made or obtained in contravention of this Act, or which has been entrusted in confidence to him by any person holding office under His Majesty or which he has obtained [or to which he has had access] owing to his position as a person who holds or has held office under His Majesty, or as a person who holds or has held a contract made on behalf of His Majesty, or as a person who is or has been employed under a person who holds or has held such an office or contract,—

- (a) Communicates the [code word, pass word,] sketch, plan, model, article, note, document, or information to any person, other than a person to whom he is authorised to communicate it, or a person to whom it is in the interest of the State his duty to communicate it, or
- (aa) Uses the information in his possession for the benefit of

any foreign power or in any other manner prejudicial to the safety or interest of the State;]

- (b) retains the sketch, plan, model, article, note, or document in his possession or control when he has not right to retain it or when it is contrary to his duty to retain it [or fails to comply with all directions issued by lawful authority with regard to the return or disposal thereof] or
- (c) fails to take reasonable care of, or so conducts himself as to endanger the safety of the sketch, plan, model, article, note, document, secret official code or pass word or information):

that person shall be guilty of a misdemeanour

[(1A) If any person having in his possession or control any sketch, plan, model, article, note, document, or information which relates to munitions of war, communicates it directly or indirectly to any foreign power, or in any other manner prejudicial to the safety or interests of the State, that person shall be guilty of a misdemeanour;]

(2) If any person receives any [secret official code word, or pass word, or] sketch, plan, model, article, note, document, or information, knowing, or having reasonable ground to believe, at the time when he receives it, that the [code word, pass word,] sketch, plan, model, article, note, document, or information is communicated to him in contravention of this Act, he shall be guilty of a misdemeanour, unless he proves that the communication to him of the [code word, pass word,] sketch, plan, model, article, note, document, or information was contrary to his desire

(3) (*Rep. by the Official Secrets Act 1920, s 11 (2) and Sch 2.*)

3. Definition of prohibited place

For the purposes of this Act, the expression "prohibited place" means—

- (a) Any work of defence, arsenal, naval or air force establishment or station, factory, dockyard, mine, minefield, camp, ship, or aircraft belonging to or occupied by or on behalf of His Majesty, or any telegraph, telephone, wireless or signal station, or office so belonging or occupied, and any place belonging to or occupied by or on behalf of His Majesty and used for the purpose of building, repairing, making, or storing any munitions of war, or any sketches, plans, models, or documents relating thereto, or for the purpose of getting any metals, oil, or minerals of use in time of war], and
- (b) any place not belonging to His Majesty where any [munitions of war], or any [sketches, models, plans] or documents relating thereto, are being made, repaired, [gotten] or stored under contract with, or with any person on behalf of, His Majesty, or otherwise on behalf of His Majesty; and
- (c) any place belonging to [or used for the purposes of] His Majesty which is for the time being declared [by order of a Secretary of State] to be a prohibited place for the purposes of this section on the ground that information with respect thereto, or damage thereto, would be useful to an enemy; and
- (d) any railway, road, way, or channel, or other means of communication by land or water (including any works

or structures being part thereof or connected therewith), or any place used for gas, water, or electricity works or other works for purposes of a public character, or any place where any [munitions of war], or any [sketches, models, plans] or documents relating thereto, are being made, repaired, or stored otherwise than on behalf of His Majesty, which is for the time being declared [by order of a Secretary of State] to be a prohibited place for the purposes of this section, on the ground that information with respect thereto, or the destruction or obstruction thereof, or interference therewith, would be useful to an enemy.

4, 5. (S. 4 rep. by the Official Secrets Act 1920, s. 11 (2) and Sch. 2, s. 5 rep. by the Criminal Law Act 1967, s. 10 (2) and Sch. 3, Part III.)

6. Power to arrest

Any person who is found committing an offence under this Act . . . or who is reasonably suspected of having committed, or having attempted to commit, or being about to commit, such an offence, may be apprehended and detained . . .

7. Penalty for harbouring spies

If any person knowingly harbours any person whom he knows, or has reasonable grounds for supposing, to be a person who is about to commit or who has committed an offence under this Act, or knowingly permits to meet or assemble in any premises in . . . occupation or under his control any such persons, or if any person having harboured any such person, or permitted to meet or assemble in any premises in his occupation or under his control any such persons, [wilfully omits or refuses] to disclose to a superintendent of police any information which it is in his power to give in relation to any such person he shall be guilty of a misdemeanour . . .

8. Restriction on prosecution

A prosecution for an offence under this Act shall not be instituted except by or with the consent of the Attorney-General:

Provided that a person charged with such an offence may be arrested, or a warrant for his arrest may be issued and executed, and any such person may be remanded in custody or on bail, notwithstanding that the consent of the Attorney-General to the institution of a prosecution for the offence has not been obtained, but no further or other proceedings shall be taken until that consent has been obtained

9. Search warrants

(1) If a justice of the peace is satisfied by information on oath that there is reasonable ground for suspecting that an offence under this Act has been or is about to be committed, he may grant a search warrant authorising any constable named therein to enter at any time any premises or place named in the warrant, if necessary, by force, and to search the premises or place and every person found therein, and to seize any sketch, plan, model, article, note, or document, or anything of a like nature or anything which is evidence to an offence under this Act having been or being about to be committed, which he may find on the premises or place or on any such person, and with regard to or in connexion with which he

has reasonable ground for suspecting that an offence under this Act has been or is about to be committed.

(2) Where it appears to a superintendent of police that the case is one of great emergency and that in the interests of the State immediate action is necessary, he may by a written order under his hand give to any constable the like authority as may be given by the warrant of a justice under this section.

10. Extent of Act and place of trial of offence

(1) This Act shall apply to all acts which are offences under this Act when committed in any part of His Majesty's dominions, or when committed by British officers or subjects elsewhere

(2) An offence under this Act, if alleged to have been committed out of the United Kingdom, may be inquired of, heard, and determined, in any competent British court in the place where the offence was committed, or . . . in England . . .

(3) An offence under this Act shall not be tried . . . by the sheriff court in Scotland, nor by any court out of the United Kingdom which has not jurisdiction to try crimes which involve the greatest punishment allowed by law.

(4) The provisions of the Criminal Law and Procedure (Ireland) Act, 1887, shall not apply to any trial under the provisions of this Act.

11. Saving for laws of British possessions

If by any law made before or after the passing of this Act by the legislature of any British possession provisions are made which appear to His Majesty to be of the like effect as those contained in this Act, His Majesty may, by Order in Council, suspend the operation within that British possession of this Act, or of any part thereof, so long as the law continues in force there, and no longer, and the Order shall have effect as if it were enacted in this Act

Provided that the suspension of this Act, or of any part thereof, in any British Possession shall not extend to the Holder of an office under His Majesty who is not appointed to that office by the Government of that possession.

12. Interpretation

In this Act, unless the context otherwise requires,—

Any reference to a place belonging to His Majesty includes a place belonging to any department of the Government of the United Kingdom or of any British possessions, whether the place is or is not actually vested in His Majesty;

The expression "Attorney-General" means the Attorney or Solicitor General for England; and as respects Scotland, means the Lord Advocate, and as respects Ireland, means the Attorney or Solicitor General for Ireland, and, if the prosecution is instituted in any court out of the United Kingdom, means the person who in that court is Attorney-General, or exercises the like functions as the Attorney General in England;

Expressions referring to communicating or receiving include any communicating or receiving, whether in whole or in part, and whether the sketch, plan, model, article, note, document, or information itself or the substance, effect, or description thereof only be communicated or

received; expressions referring to obtaining or retaining any sketch, plan, model, article, note, or document, include the copying or causing to be copied the whole or any part of any sketch, plan, model, article, note or document, and expressions referring to the communication of any sketch, plan, model, article, note or document include the transfer or transmission of the sketch, plan, model, article, note or document;

The expression "document" includes part of a document

The expression "model" includes design, pattern, and specimen,

The expression "sketch" includes any photograph or other mode of representing any place or thing;

[The expression "munitions of war" includes the whole or any part of any ship, submarine, aircraft, tank or similar engine, arms and ammunition, torpedo, or mine, intended or adapted for use in war, and any other article, material, or device, whether actual or proposed, intended for such use.]

The expression "superintendent of police" includes any police officer of a like or superior rank [and any person upon whom the powers of a superintendent of police are for the purpose of this Act conferred by a Secretary of State];

The expression "office under His Majesty" includes any office or employment in or under any department of the Government of the United Kingdom, or of any British possession;

The expression "offence under this Act" includes any act, omission, or other thing which is punishable under this Act.

13. Short title

(1) This Act may be cited as the Official Secrets Act, 1911.

(2) (*Rep. by the S.L.R. Act 1927.*)

NOTES - ACT OF 1911

Section 1

The words omitted were repealed, and the words in square brackets were added, by the Official Secrets Act 1920, ss. 10, 11 (2) and Schs. 1, 2.

General Note. In *Chandler v. Director of Public Prosecutions*, [1964] A.C. at p. 777; [1962] 3 All E.R. 142, the House of Lords held that on the true construction of this section: (a) the section was not limited to offences of spying notwithstanding that its marginal heading referred only to spying but extended to the saboteur as much as to the spy; (b) "purpose" within the meaning of this section was to be distinguished from the motive for doing an act, and the words "any purpose" meant or included the achieving of the consequence which a person intended and desired to follow directly on his act, *viz.*, his direct or immediate purpose as opposed to his ultimate aim, and even if a person had several purposes, his immediate purpose remained one of them and was within the words "any purpose"; (c) in the phrase "interests of the State" the word "State" meant (*per* Lords Reid and Hodson) the organised community or (*per* Lords Devlin and Pearce) the organs of government of a national community, and (*per* Lords Devlin and Pearce) the

"interests of the State" meant such interest according to the policies of the State as they in fact were, not as it might be argued that they ought to be

As to the obtaining of information concerning offences or suspected offences under this section, see the Official Secrets Act 1920, s. 6, p. 299, *post*.

Purpose prejudicial to the safety or interest of the State. See the General Note above; and note the provisions of sub s. (2) above

Enemy. This includes a potential enemy with whom there might be war (*R. v. Parrott* (1913), 8 Cr. App. Rep. 186).

Obtains ... or communicates ... information ... useful to an enemy. Communication or attempted communication with a foreign agent is to be evidence that a person has obtained or attempted to obtain information of the kind mentioned in sub s. (1) (c); see the Official Secrets Act 1920, s. 2 (1), p. 296, *post*, and see also s. 2 (2) of that Act, p. 296, *post*.

The falsity of the information given is not material except as to a possible defence of intent to mislead (*R. v. M.* (1915), 23 T.L.R. 1, C.C.A.).

Shall be guilty of felony. The distinctions between felony and misdemeanour were abolished, and the law and practice applying to misdemeanour were in general made applicable to all offences, by the Criminal Law Act 1967, s. 1, p. 552, *post*. See also, in particular, s. 12 (5) of that Act, p. 561, *post*, as to the construction of existing enactments.

The punishment is laid down by the Official Secrets Act 1920, s. 8 (1), p. 300, *post*. See also s. 1 (3)-(5) of that Act, p. 301, *post*; s. 7 of that Act, p. 300, *post* (attempts, incitements, etc.); s. 6, *post* (power of arrest); s. 7, *post* (penalty for harbouring); s. 8, *post* (restriction on prosecution); s. 9, *post* (search warrants); and s. 10, *post* (extent of Act and place of trial of offence).

The offence is excluded from the jurisdiction of all courts of quarter sessions, see the Criminal Law Act 1967, s. 8 (2) and Sch. 1, List B, para. 15, Vol. 21, title Magistrates.

Definitions. For "prohibited place", see s. 3, *post*, for "communicates", "obtains", "document", "model" and "sketch", see s. 12, *post*.

Section 2

The words in square brackets in sub ss. (1) and (2) and the whole of sub-ss. (1) (aa), (c), (1A), were added by the Official Secrets Act 1920, ss. 9 (1), 10 and Sch. 1

Extension. This section is applied to recommendations and directions made under the Bank of England Act 1906, see s. 4 (4), (5) of that Act, Vol. 2, p. 767.

Relates to ... a prohibited place, etc. An offence under this section may be committed though the code word, etc., does not relate to a prohibited place (*R. v. Simington*, [1921] 1 K.B. 451, C.C.A.).

Made or obtained in contravention of this Act See s. 1 (1) (b), (c), *ante*.

Entrusted in confidence to him, etc. It is not necessary to prove that the information was entrusted especially in confidence to him (*R. v. Crisp and Homewood* (1919), 83 J.P. 121)

Office under His Majesty. See the definition in s. 12 *post*, and the note thereto

Contract made on behalf of His Majesty. Any contract with the United Kingdom Atomic Energy Authority is to be deemed for

the purposes of this section to be a contract with Her Majesty; see the Atomic Energy Authority Act 1954, s. 6 (4) and Sch. 3, Vol. 37, title Trade and Industry.

Manner prejudicial to the safety or interests of the State. Cf. the General Note to s. 1, *ante*.

Shall be guilty of a misdemeanour. The note "Shall be guilty of a felony" to s. 1, *ante*, applies subject to the modification that in the case of misdemeanours the punishment is laid down by the Official Secrets Act 1920, s. 8 (2), p. 300, *post*.

Knowing. See the note "knows" to the Perjury Act 1911, s. 1, p. 242, *ante*.

Reasonable ground to believe. See the Note "Reasonable cause to believe" to the Foreign Enlistment Act 1870, s. 8, p. 186, *ante*.

Unless he proves. The burden of proof laid on the defendant is less onerous than that resting on the prosecution as regards proving the offence, and may be discharged by satisfying the court of the probability, or rather the preponderance of probability, of what the defendant is called to prove; see *R. v. Carr-Briant*, [1943] K B 607, [1943] 2 All E.R. 156, and *R. v. Dunbar*, [1958] 1 Q.B. 1, [1957] 2 All E.R. 737.

Definitions. For "prohibited place," see s. 3, *post*; for "communicates", "receives", "obtained", "retains", "document", "model", "sketch", "munitions of war" and "office under His Majesty", see s. 12, *post*. See also, as to "office under His Majesty", the note to s. 12, *post*.

Section 3

The words in square brackets were substituted and added by the Official Secrets Act 1920, s. 10 and Sch. 1.

Para. (c). Any place belonging to or used for the purposes of the United Kingdom Atomic Energy Authority is regarded as a place belong to or used for the purposes of Her Majesty under this paragraph; see the Atomic Energy Authority Act 1954, s. 6 (3), Vol. 37, title Trade and Industry.

Definitions. For "document", "model", "munitions of war", "place belonging to His Majesty" and "sketch", see s. 12, *post*.

Orders under para. (c). The Official Secrets (Ministry of Supply) Order 1947, S.R. & O. 1947 No. 1357; the Official Secret (Ministry of Supply) (No. 2) Order 1947, S.R. & O. 1947 No. 2355, the Official Secrets (Ministry of Supply) Order 1949, S.I. 1949 No. 2315; the Official Secrets (Ministry of Supply) Order 1950, S.I. 1950 No. 826; the Official Secrets (Prohibited Place) Order 1954, S.I. 1954 No. 243; the Official Secrets (Prohibited Place) (No. 2) Order 1954, S.I. 1954, No. 1482; the Official Secrets (Cyprus) Order 1955, S.I. 1955 No. 564; the Official Secrets (Cyprus) (No. 2) Order 1955, S.I. 1955 No. 1410, the Official Secrets (Prohibited Place) Order 1955, S.I. 1955 No. 1497; the Official Secrets (Prohibited Place) Order 1955, S.I. 1956 No. 1438, the Official Secrets (Prohibited Place) Order 1958, S.I. 1958 No. 1935, the Official Secrets (Prohibited Places) Order 1959, S.I. 1959 No. 705, as amended by S.I. 1964 No. 92; the Official Secrets (Prohibited Places) Order 1960, S.I. 1960 No. 1348. For the places specified by these orders, see 6 Halsbury's Statutory Instruments, title Criminal Law (Part 4).

Section 6

The words omitted were repealed by the Criminal Law Act 1967, s. 10 (2) and Sch. 3, Part III.

Section 7

The words in square brackets were substituted, and the words omitted were repealed, by the Official Secrets Act 1920, ss. 10 and 11 (2) and Schs. 1 and 2.

Knowingly. See the note "Knows" to the Perjury Act 1911, s. 1, p. 242, *ante*.

Wilfully. Cf. the note to the Perjury Act 1911, s. 1, p. 241, *ante*.

Superintendent of police. See the definition in s. 12, *post*.

Shall be guilty of a misdemeanour. The note "Shall be guilty of a felony" to s. 1, *ante*, applies subject to the modification that in the case of misdemeanours the punishment is laid down by the Official Secrets Act 1920, s. 8 (2), p. 300, *post*.

Section 8

Attorney-General. For meaning see s. 12, *post*.

Section 9

Definitions. For "document", "model", "sketch" and "superintendent of police" see s. 12, *post*.

Section 10

The words omitted from sub-s. (2) were repealed by the Criminal Justice Act 1948, s. 83 (3) and Sch. 10, Part I, and the Criminal Law Act 1967, s. 10 (2) and Sch. 3, Part I. The words omitted from sub-s. (3) were repealed by s. 10 (2) of, and Part II of Sch. 3 to, the Act of 1967.

United Kingdom. *i.e.*, Great Britain and Northern Ireland, see the Royal and Parliamentary Titles Act 1927, s. 2 (2), Vol. 6, p. 520.

Offence under this Act should not be tried, etc. Offences under this Act are also excluded from the jurisdiction of all courts of quarter sessions, see the Criminal Law Act 1967, s. 8 (2) and Sch. 1, List B, para. 15, Vol. 21, title Magistrates.

Criminal Law and Procedure (Ireland) Act 1887. 50 & 51 Vict. c. 20; not printed in this work.

Section 11

See all the Official Secrets Act 1920, s. 11 (1) proviso (a), p. 302, *post*, as to the exclusion of that Act from application to the Dominions.

British possession. For meaning, see the Interpretation Act 1889, s. 18 (2), Vol. 32, title Statutes.

Office under His Majesty. See the definition in s. 12, *post*, and the note thereto.

Orders under this section. The Official Secrets (Commonwealth of Australia) Order in Council 1915, S.R. & O. 1915 No. 1199, the Official Secrets (Mauritius) Order in Council 1916, dated 12th April 1916, the Official Secrets (Malta) Order in Council 1923, S.R. & O. 1923 No. 650, the Official Secrets (India) Order in Council 1923, S.R. & O. 1923 No. 1517, the Official Secrets (Strait Settlements) Order in Council 1936, S.R. & O. 1936 No. 409; the Official Secrets (Penang and Malacca) Order in Council 1950, S.I. 1950 No. 1779; the Official Secrets (Jersey) Order 1952, S.I. 1952 No. 1034.

Section 12

The words in square brackets defining "munitions of War" were added, and the words in square brackets relating to the definition of "superintendent of police" were substituted, by the Official Secrets Act 1920, ss 9 (2), 10 and Sch. 1.

United Kingdom. See the note to s 10, *ante*

Office under His Majesty. This also includes membership of an office or employment under the United Kingdom Atomic Energy Authority (Atomic Energy Authority Act 1954, s. 6 (4) and Sch. 3, Vol. 37, title Trade and Industry, which applies, however, only for the purposes of s. 2, *ante*), the Parliamentary Commissioner for Administration and his officers (Parliamentary Commissioner Act 1967, s. 11 (1), Vol. 6, p. 829) and police officers (*Lewis v. Cattle*, [1938] 2 K B 454; [1938] 2 All E.R. 368)

THE OFFICIAL SECRETS ACT 1920

(10 & 11 Geo. 5 c. 75)

Arrangement of Sections

- 1 Unauthorised use of uniforms; falsification of reports, forgery, personation, and false documents
- 2 Communications with foreign agents to be evidence of commission of certain offences
- 3 Interfering with officers of the police or member of His Majesty's forces
- 4 Power to require the production of telegrams
- 5 Registration and regulation of persons carrying on the business of receiving postal packets
- 6 Superseded by Act of 1939
- 7 Attempts, incitements, etc.
- 8 Provisions as to trial and punishment of offences
- 10 Minor amendments of principal Act
- 11 Short title, construction, and repeal

An Act to amend the Official Secrets Act, 1911

[23rd December 1920]

See the Introductory Note to the Official Secrets Act 1911, p. 250 *ante*.

Official Secrets Act 1911 to 1939. This Act is one of the Acts which may be cited by this collective title; see the Introductory Note to the Official Secrets Act 1911, p. 250, *ante*

Northern Ireland This Act applies.

1. Unauthorised use of uniforms; falsification of reports, forgery, personation, and false documents

(1) If any person for the purpose of gaining admission, or of assisting any other person to gain admission, to a prohibited place, within the meaning of the Official Secrets Act, 1911 (hereinafter referred to as "the principal Act"), or for any other purpose prejudicial to the safety or interests of the State within the meaning of the said Act—

- (a) uses or wears, without lawful authority, any naval, military, air force, police, or other official uniform, or any uniform so nearly resembling the same as to be calculated to deceive, or falsely represents himself to be a person who is or has been entitled to use or wear any such uniform, or

(b) orally, or in writing in any declaration or application, or in any document signed by him or on his behalf, knowingly makes or connives at the making of any false statement or any omission; or

(c) forges, alters, or tampers with any passport or any naval, military, air-force, police, or official pass, permit, certificate, licence, or other document of a similar character (hereinafter in this section referred to as an official document), or uses or has in his possession any such forged, altered, or irregular official document; or

(d) personates, or falsely represents himself to be a person holding, or in the employment of a person holding office under His Majesty, or to be or not to be a person to whom an official document or secret official code word or pass word has been duly issued or communicated, or with intent to obtain an official document, secret official code word or pass word, whether for himself or any other person, knowingly makes any false statement; or

(e) uses, or has in his possession or under his control, without the authority of the Government Department or the authority concerned, any die, seal, or stamp of or belonging to, or used, made or provided by any Government Department, or by any diplomatic, naval, military, or air force authority appointed by or acting under the authority of His Majesty, or any die, seal or stamp so nearly resembling any such die, seal or stamp as to be calculated to deceive, or counterfeits any such die, seal or stamp, or uses, or has in his possession, or under his control, any such counterfeited die, seal or stamp,

he shall be guilty of a misdemeanour.

(2) If any person—

(a) retains for any purpose prejudicial to the safety or interests of the State any official document, whether or not completed, or issued for use, when he has no right to retain it, or fails to comply with any directions issued by any Government Department or any person authorised by such department with regard to the return or disposal thereof; or

(b) allows any other person to have possession of any official document issued for his use along, or communicates any secret official code word or pass word so issued, or, without lawful authority or excuse, has in his possession any official document or secret official code word or pass word issued for the use of some person other than himself, or on obtaining possession of any official document by finding or otherwise, neglects or fails to restore it to the person or authority by whom or for whose use it was issued, or to a police constable; or

(c) without lawful authority or excuse, manufactures or sells, or has in his possession for sale any such die, seal or stamp as aforesaid;

he shall be guilty of a misdemeanour.

(3) In the case of any prosecution under this section involving the proof of a purpose prejudicial to the safety or interests of the State, subsection (2) of section one of the principal Act shall apply in like manner as it applies to prosecutions under that section

2. Communications with foreign agents to be evidence of commission of certain offences

(1) In any proceedings against a person for an offence under section one of the principal Act, the fact that he has been in communication with, or attempted to communicate with, a foreign agent, whether within or without the United Kingdom, shall be evidence that he has, for a purpose prejudicial of the safety or interest of the State, obtained or attempted to obtain information which is calculated to be or might be or is intended to be directly or indirectly useful to an enemy.

(2) For the purpose of this section, but without prejudice to the generality of the foregoing provision—

- (a) A person shall, unless he proves the contrary, be deemed to have been in communication with a foreign agent if—
- (i) He has, either within or without the United Kingdom, visited the address of a foreign agent or consorted or associated with a foreign agent; or
 - (ii) Either, within or without the United Kingdom, the name or address of, or any other information regarding a foreign agent has been found in his possession, or has been supplied by him to any other person, or has been obtained by him from any other person.
- (b) The expression "foreign agent" includes any person who is or has been or is reasonably suspected of being or having been employed by a foreign power either directly or indirectly for the purpose of committing an act, either within or without the United Kingdom, prejudicial to the safety or interests of the State, or who has or is reasonably suspected of having, either within or without the United Kingdom, committed, or attempted to commit, such an act in the interests of a foreign power.
- (c) Any address, whether within or without the United Kingdom, reasonably suspected of being an address used for the receipt of communications intended for a foreign agent, or any address at which a foreign agent resides, or to which he resorts for the purpose of giving or receiving communications, or at which he carries on any business, shall be deemed to be the address of a foreign agent and communications addressed to such an address to be communications with a foreign agent.

3. Interfering with officers of the police or members of His Majesty's forces

No person in the vicinity of any prohibited place shall obstruct, knowingly mislead or otherwise interfere with or impede, the chief officer or a superintendent or other officer of police, or any member of His Majesty's forces engaged on guard, sentry, patrol or other similar duty in relation to the prohibited place, and, if any person acts in contravention of, or fails to comply with, this provision, he shall be guilty of a misdemeanour.

4. Power to require the production of telegrams

(1) Where it appears to a Secretary of State that such a course is expedient in the public interest, he may, by warrant under his hand, require any person who owns or controls any telegraphic cable or wire, or any apparatus for wireless telegraphy, used for the sending or receipt of telegram, to come from any place out of the United Kingdom, to produce to him, or to any person named in the

warrant, the originals and transcripts, either of all telegrams, or of telegrams of any specified class or description, or of telegrams sent from or addressed to any specified person or place, sent or received to or from any place out of the United Kingdom by means of any such cable, wire, or apparatus, and all other papers relating to any such telegram as aforesaid.

(2) Any person who, on being required to produce any such original or transcript or paper as aforesaid, refuses or neglects to do so shall be guilty of an offence under this Act, and shall, for each offence, be liable on conviction under the Summary Jurisdiction Acts to imprisonment with or without hard labour for a term not exceeding three months, or to a fine not exceeding fifty pounds, or to both such imprisonment and fine.

(3) In this section the expression "telegram" shall have the same meaning as in the Telegraph Act, 1968, and the expression "wireless telegraphy" shall have the same meaning as in the Wireless Telegraphy Act, 1904.

5. Registration and regulation of persons carrying on the business of receiving postal packets

(1) Every person who carries on, whether alone or in conjunction with any other business, the business of receiving for reward letters, telegrams, or other postal packets for delivery or forwarding to the persons for whom they are intended, shall as soon as may be send to the chief officer of police for the district, for registration by him, notice of the fact together with the address or addresses where the business is carried on, and the chief officer of police shall keep a register of the names and address of such persons, and shall, if required by any person who sends such a notice, furnish him on payment of a fee of [seven shillings and sixpence] with a certificate of registration, and every person so registered shall from time to time furnish to the chief officer of police notice of any change of address or new address at which the business is carried on, and such other information as may be necessary for maintaining the correctness of the particulars entered in the register.

(2) Every person who carries on such a business as aforesaid shall cause to be entered in a book kept for the purpose the following particulars—

- (a) the name and address of every person for whom any postal packet is received, or who has requested that postal packets received may be delivered or forwarded to him,
- (b) any instructions that may have been received as to the delivery or forwarding of postal packets,
- (c) in the case of every postal packet received, the place from which the postal packet comes, and the date of posting (as shown by the postmark) and the date of receipt, and the name and address of the sender if shown on the outside of the packet, and, in the case of a registered packet, the date and office of registration and the number of the registered packet,
- (d) in the case of every postal packet delivered, the date of delivery and the name and address of the person to whom it is delivered,
- (e) in the case of every postal packet forwarded, the name and address to which and the date on which it is forwarded;

and shall not deliver a letter to any person until that person has signed a receipt for the same in such book as aforesaid nor, if that

person is not the person to whom the postal packet is addressed, unless there is left with him instructions signed by the last mentioned person as to the delivery thereof, and shall not forward any postal packet to another address unless there is left with him written instructions to that effect signed by the addressee.

(3) The books so kept and all postal packets received by a person carrying on any such business, and any instruction as to the delivery or forwarding of postal packets received by any such person, shall be kept at all reasonable times open to inspection by any police constable.

(4) If any person contravenes or fails to comply with any of the provisions of this section, or furnishes any false information or makes any false entry, he shall be guilty of an offence under this Act, and shall, for each offence, be liable on conviction under the Summary Jurisdiction Acts to imprisonment with or without hard labour for a term not exceeding one month, or to a fine not exceeding ten pounds, or to both such imprisonment and fine.

(5) Nothing in this section shall apply to postal packets addressed to any office where any newspaper or periodical is published, being postal packets in reply to advertisements appearing in such newspaper or periodical.

(6) Nothing in this section shall be construed as rendering legal anything which would be in contravention of the exclusive privilege of the Postmaster General under the Post Office Acts, 1908 to 1920, or the Telegraph Acts, 1963 to 1920.

6 (1) Where a chief officer of police is satisfied that there is reasonable ground for suspecting that an offence under section one of the principal Act has been committed and for believing that any person is able to furnish information as to the offence or suspected offence, he may apply to a Secretary of State for permission to exercise the powers conferred by this subsection and, if such permission is granted, he may authorise a superintendent of police, or any police officer not below the rank of inspector, to require that person believed to be able to furnish information to give any information in his power relating to the offence or suspected offence, and, if so required and on tender of his reasonable expenses, to attend at such reasonable time and place as may be specified by the superintendent or other officer, and if a person required in pursuance of such an authorisation to give information, or to attend as aforesaid, fails to comply with any such requirement or knowingly gives false information, he shall be guilty of a misdemeanour.

(2) Where a chief officer of police has reasonable grounds to believe that the case is one of great emergency and that in the interest of the State immediate action is necessary, he may exercise the powers conferred by the last foregoing subsection without applying for or being granted the permission of a Secretary of State, but if he does so shall forthwith report the circumstances to the Secretary of State.

(3) References in this section to a chief officer of police shall be construed as including references to any other officer of police expressly authorised by a chief officer of police to act on his behalf for the purposes of this section when by reason of illness, absence, or other cause he is unable to do so.]

7. Attempts, incitements, etc.

Any person who attempts to commit any offence under the principal Act or this Act, or solicits or incites or endeavours to persuade another person to commit an offence, or aids or abets and does any act preparatory to the commission of an offence under the principal Act or this Act, shall be guilty of a felony or a misdemeanour or a summary offence according as the offence in question is a felony, a misdemeanour or a summary offence, and on conviction shall be liable to the same punishment, and to be proceeded against in the same manner, as if he had committed the offence.

8. Provisions as to trial and punishment of offences

(1) Any person who is guilty of a felony under the principal Act or this Act shall be liable to penal servitude for a term of not less than three years and not exceeding fourteen years.

(2) Any person who is guilty of a misdemeanour under the principal Act or this Act shall be liable on conviction on indictment to imprisonment, with or without hard labour, for a term not exceeding two years, or, on conviction under the Summary Jurisdiction Acts, to imprisonment, with or without hard labour, for a term not exceeding three months or to a fine not exceeding fifty pounds, or both such imprisonment and fine.

Provided that no misdemeanour under the principal Act or this Act shall be dealt with summarily except with the consent of the Attorney General.

(3) For the purposes of the trial of a person for an offence under the principal Act or this Act, the offence shall be deemed to have been committed either at the place in which the same actually was committed, or at any place in the United Kingdom in which the offender may be found.

(4) In addition and without prejudice to any powers which a court may possess to order the exclusion of the public from any proceedings if, in the course of proceedings before a court against any person for an offence under the principal Act or this Act or the proceedings on appeal, or in the course of the trial of a person for felony or misdemeanour under the principal Act or this Act, application is made by the prosecution, on the ground that the publication of any evidence to be given or of any statement to be made in the course of the proceedings would be prejudicial to the national safety, that all or any portion of the public shall be excluded during any part of the hearing, the court may make an order to that effect, but the passing of sentence shall in any case take place in public.

(5) Where the person guilty of an offence under the principal Act or this Act is a company or corporation, every director and officer of the company or corporation shall be guilty of the like offence unless he proves that the act or omission constituting the offence took place without his knowledge or consent.

9. (*Amends the Official Secrets Act 1911 ss 2, 12, pp 252, 256 ante.*)

10. Minor amendments of principal Act

The amendments specified in the second column of the First Schedule to this Act (which relates to minor details) shall be made in the

provisions of the principal Act specified in the first column of that schedule

11. Short title, construction, and repeal

(1) This Act may be cited as the Official Secrets Act, 1920, and shall be construed as one with the principal Act, and the principal Act and this Act may be cited together as the Official Secrets Acts, 1911 and 1920

Provided that—

(a) this Act shall not apply to any of the following Dominions, that is to say, the Dominion of Canada, the Commonwealth of Australia (which for this purpose shall be deemed to include Papua and Norfolk Island), the Dominion of New Zealand, ... India ...; and

(b) applies to Scotland).

(2) (Rep by the S.L.R. Act 1927.)

(3) For the purposes of this Act, the expression "chief officer of police,"—

(a) with respect to any place in England other than the city of London, has the meaning assigned to it by the Police Act, 1890;

(b) with respect to the city of London, means the Commissioner of the City Police;

(c) applies to Scotland);

(d) with respect to Ireland, means, in the police district of Dublin metropolis, either of the Commissioners of Police for that district, and elsewhere the district inspector of the Royal Irish Constabulary

NOTES — ACT OF 1920

Section 1

Prohibited place. For the meaning of this term, see the Official Secrets Act 1911, s. 3, p. 253, *ante*, and the notes thereto.

Purpose prejudicial to the safety or interest of the State. Cf. the General Note to the Official Secrets Act 1911, s. 1 p. 251, *ante*; and note sub s. (3) above.

Uses or wears, without lawful authority, etc. See also the Uniforms Act 1894, Vol. 29, title Royal Forces, as to the restriction of the wearing by authorised persons of naval, military and air force uniforms

As to wrongful use of the uniform or an association incorporated by Royal charter and penalties therefor, see the Chartered Associations (Protection of Names and Uniforms) Act 1926, s. 1 (3), (4), Vol. 37, title Trade Marks and Trade Names

Knowingly. See the note "Knows" to the Perjury Act 1911, s. 1, p. 242, *ante*

Forges ... any passport. See also the Criminal Justice Act 1925, s. 36, Vol. 21, title Magistrates

False. See the note to the Perjury Act 1911, s. 1, p. 242, *ante*

Shall be guilty of a misdemeanour. The distinctions between felony and misdemeanour were abolished, and the law and practice applying to misdemeanour were in general made applicable to all offences, by the Criminal Law Act 1967, s. 1, p. 552, *post*. See also, in particular, s. 12 (5) of that Act, p. 561, *post*, as to the construction of existing enactments

The punishment is laid down by s. 8 (2), *post*. See also s. 8 (3) (5), *post*, s. 7, *post* (attempts, incitements, etc.); and (by virtue of s. 11 (1), *post*) the Official Secrets Act 1911, ss. 6, 10, pp. 254, 255, *ante*

Offences under this Act are excluded from the jurisdiction of all courts of quarter sessions; see the Criminal Law Act 1967, s. 8 (2) and Sch. 1, List A, Division II, para. 5 (a), and List B, para. 15, Vol. 21, title Magistrates

Definitions. For "communicates", "retains", "document" and "office under his Majesty", see (by virtue of s. 11 (1), *post*) the Official Secrets Act 1911, s. 12, p. 256, *ante*. See also as to "office under his Majesty" the note to s. 12 of the Act of 1911, p. 257, *ante*; and note as to "official document", sub s. (1) (c) above.

Section 2

Enemy. See the note to the Official Secrets Act 1911, s. 1, p. 251, *ante*

Unless he proves the contrary. See the first note to the Prevention of Corruption Act 1916, s. 2, p. 291, *ante*.

Principal Act. *i.e.*, the Official Secrets Act 1911, see s. 1 (1), *ante*. For s. 1 of that Act, see p. 250, *ante*.

Section 3

In the vicinity of. This expression means "in or in the vicinity of", see *Adler v. George*, [1964] 1 All E.R. 628

Obstructs. Obstruction need not involve physical violence, see, in particular, *Borrow v. Howland* (1896), 74 L.T. 787, and *Hinchliffe v. Sheldon*, [1955] 3 All E.R. 406. In fact there is authority for saying that anything which makes it more difficult for a person to carry out his duty amounts to obstruction, see *Hinchliffe v. Sheldon* above. Yet standing by and doing nothing is not obstruction unless there is a legal duty to act; see *Swallow v. London County Council*, [1916] 1 K.B. 224, [1914 15] All E.R. Rep. 403, and contrast *Baker v. Ellison*, [1914] 2 K.B. 762, but see *Rice v. Connolly*, [1966] 2 Q.B. 414; [1966] 2 All E.R. 649

Knowingly. See the note "Knows" to the Perjury Act 1911, s. 1, p. 242, *ante*.

Shall be guilty of a misdemeanour. See the note to s. 1, *ante*

Definitions. For "chief officer of police", see s. 11 (3), *post* by virtue of s. 11 (1), *post*, for "prohibited place" and "superintendent of police", see ss. 3 and 12, respectively, of the Official Secrets Act 1911, pp. 253, 256, *ante*

Section 4

United Kingdom. *i.e.*, Great Britain and Northern Ireland, see the Royal and Parliamentary Titles Act 1927, s. 2 (2), Vol. 6, p. 520

Hard labour. Imprisonment with hard labour was abolished by the Criminal Justice Act 1948, s. 1 (2), p. 339, *post*

Not exceeding three months. As the maximum term of imprisonment is not more than three months, trial by jury may not be claimed under the Magistrates' Courts Act 1952, s. 25, Vol. 21, title Magistrates

Summary Jurisdiction Acts. This expression is defined by the Interpretation Act 1889, s. 13 (10), Vol. 32, title Statutes. The Acts have been largely consolidated by the Magistrates' Courts Act 1952, Vol. 21, title Magistrates, as respects England and Wales

Telegraph Act 1869. See Vol. 35, title Telegraphs and Telephones. "Telegram" is defined in s. 3 of that Act

Wireless Telegraphy Act 1904. That Act expired on 1st June 1954, for the meaning of "wireless telegraphy", see now the Wireless Telegraphy Act 1949, s. 19 (1), Vol. 35, title Telegraphs and Telephones, by virtue of s. 18 (2) of that Act.

Section 5

The words in square brackets in sub s. (1) were substituted by the Miscellaneous Fees (Variation) Order 1978, S.I. 1968 No. 170 (made under the Local Government Act 1966, s. 35 (2) and Sch. 3, Part II, Vol. 19, title Local Government), and the fee in question may be further varied or may be abolished by order made under that power.

Chief officer of police. For the meaning of this term, see s. 11 (3), *post*.

If any person contravenes. "Any person" includes a person using, as well as keeping, the accommodation address; see *Stevenson v Fulton*, [1936] 1 K.B. 320.

False. See the note to the Perjury Act 1911, s. 1, p. 242, *ante*.

Hard labour. Imprisonment with hard labour was abolished by the Criminal Justice Act 1948, s. 1 (2), p. 339, *post*.

Not exceeding one month. Cf. the note "Not exceeding three months" to s. 4, *ante*.

Summary Jurisdiction Acts. See the note to s. 4, *ante*.

Post Office Acts 1908 to 1920. All those Acts have been repealed; as to the exclusive privilege of the Postmaster General, and its infringement, see now the Post Office Act 1953, ss. 3, 4, Vol. 25, title Post Office.

Telegraph Acts 1863 to 1920. For the Acts which may be cited by this collective title, see the Introductory Note to the Telegraph Act 1863, Vol. 35, title Telegraphs and Telephones.

Section 6

The whole of this section was substituted by the Official Secrets Act 1939, s. 1.

Reasonable cause for suspecting; for believing; to believe. Cf. the note "Reasonable cause to believe" to the Foreign Enlistment Act 1870, s. 8, p. 186, *ante*.

Knowingly. See the note "Knows" to the Perjury Act 1911, s. 1, p. 242, *ante*.

False. See the note to the Perjury Act 1911, s. 1, p. 242, *ante*.

Shall be guilty of a misdemeanour. See the note to s. 1, *ante*.
Definitions. For "chief officer of police", see s. 11 (3), *post* (and note sub s. (3) above), for "superintendent of police", see (by virtue of s. 11 (1), *post*) the Official Secrets Act 1911, s. 12, p. 256, *ante*.

Principal Act. Defined in s. 1 (1), *ante*, as the Official Secrets Act 1911. For s. 1 of that Act, see p. 250, *ante*.

Northern Ireland. For modifications of this section in its application to Northern Ireland, see the Official Secrets Act 1939, s. 2 (2), p. 337, *post*.

Section 7

Attempts. As to attempts, see *R. v. Olsson* (1915), 31 T.L.R. 559, C.C.A.

And does any act preparatory, etc. In this phrase the word "or" should be read for "and" (*R. v. Oakes*, [1959] 2 All E.R. 92, C.C.A.).

Felony; misdemeanour. See the first paragraph of the note "Shall be guilty of a misdemeanour" to s. 1, *ante*.

Principal Act. Defined in s. 1 (1), *ante*, as the Official Secrets Act 1911, p. 250, *ante*.

Section 8

Felony; misdemeanour. See the first paragraph of the note "Shall be guilty of a misdemeanour" to s. 1, *ante*.

Penal servitude for a term, etc. In the cases mentioned in sub-s. (1) above, imprisonment for up to fourteen years has taken the place of the punishment provided by that subsection; see the Criminal Justice Act 1948, s. 1 (1), p. 339, *post*.

Where each of several offences charged in an indictment is separate and distinct the judge has a discretion whether the sentences imposed should be consecutive or concurrent, and his discretion is not limited so as to prevent him awarding consecutive sentences which would be longer in the aggregate than the maximum permitted for any one of the offences by itself (*R. v. Blake*, [1961] 3 All E.R. 125, C.C.A.).

Hard labour. Imprisonment with hard labour was abolished by the Criminal Justice Act 1948, s. 1 (2), p. 339, *post*.

Not exceeding three months; United Kingdom. See the notes to s. 4, *ante*.

Attorney General. For meaning, see (by virtue of s. 11 (1), *post*) the Official Secrets Act 1911, s. 12, p. 256, *ante*.

Unless he proves. See the first note to the Prevention of Corruption Act 1916, s. 2, p. 291, *ante*.

Knowledge. See the note "Knows" to the Perjury Act 1911, s. 1, p. 242, *ante*.

Consent. There is authority for saying that this presupposes knowledge; see *Re Caughey, Ex parte Ford* (1876), 1 Ch. D. 521, C.A., at p. 528, *per* Jessel, M.R., and *Lamb v Wright & Co.*, [1924] 1 K.B. 857; [1924] All E.R. Rep. 220, at p. 864 and p. 223, respectively. It is thought, however, that actual knowledge is not necessary; cf. *Knox v. Boyd*, 1941, S.C. (J.) 82, at p. 86, and *Taylor's Central Garages (Exeter), Ltd. v. Roper* (1951), 115 J.P. 445, at pp. 449, 450, *per* Dixon, J.; and see also, in particular, *Mallon v. Allon*, [1964] 1 Q.B. 385; [1963] 3 All E.R. 843, at p. 394 and p. 847, respectively.

Principal Act. Defined in s. 1 (1), *ante*, as the Official Secrets Act 1911, p. 250, *ante*.

Summary Jurisdiction Acts. See the note to s. 4, *ante*.

Section 10

Principal Act. Defined in s. 1 (1), *ante*, as the Official Secrets Act 1911, p. 250, *ante*.

Section 11

The words in square brackets were substituted by the Government of India (adaptation of Acts of Parliament) Order 1937, S.R. & O. 1937 No. 230, arts. 2 and Schedule, Part II as to the construction of the term "India", see the Indian Independence Act 1947, s. 18 (1), Vol. 4, p. 327. The words omitted from sub s. (1) (a) in the first place were repealed by the Newfoundland (Consequential Provisions) Act 1950, s. 1 and Schedule, Part II, and the South Africa Act 1952, s. 2 (3) and Sch. 5, and in the second place were repealed by the Burma Independence Act 1947, s. 5 and Sch. 2, Part I.

Construed as one, i.e., every part of each Act is to be

construed as if contained in one Act, unless there is some manifest discrepancy, see for example *Phillips v. Parnaby*, [1934] 2 K.B. 299; [1934] All E.R. Rep. 267, at p. 302 and p. 269, respectively; see also Preliminary Note to title Statutes in Vol. 32.

Principal Act. Defined in s. 1 (1), *ante*, as the Official Secrets Act 1911, p. 250, *ante*.

Police Act 1890. Repealed by the Police Act 1964, s. 64 (3) and Sch. 10, Part 1; see now s. 62 (b) of, and Sch. 8 to, that Act, Vol. 25, title Police.

Northern Ireland. As to "district inspector of the Royal Irish Constabulary", see the Constabulary Act (Northern Ireland) 1922 (c. 8) (N.I.), s. 1 (4) (not printed in this work)

(*Sch. 1 amends the Official Secrets Act 1911, p. 250, ante, Sch. 2 rep. by the S.L.R. Act 1927.*)

THE OFFICIAL SECRETS ACT 1939

(2 & 3 Geo. 6 c. 121)

An Act to amend section six of the Official Secrets Act, 1920
[23rd November 1939]

See the Introductory Note to the Official Secrets Act 1911, p. 250, *ante*.

Northern Ireland. This Act applies; see s. 2 (2), *post*.

1. (*Substitutes a new s. 6 in the Official Secrets Act 1920, p. 299, ante.*)

2. Short title, construction, citation, and application to Northern Ireland

(1) This Act may be cited as the Official Secrets Act, 1939, and this Act and the Official Secrets Acts, 1911 and 1920, shall be construed as one, and may be cited together as the Official Secrets Acts, 1911 to 1939

(2) It is hereby declared that this Act extends to Northern Ireland, and, in the application thereof to Northern Ireland, this Act shall have effect subject to the following modifications, that is to say, for references to a chief officer of police there shall be substituted references to a district inspector, for references to a Secretary of State there shall be substituted references to the Minister of Home Affairs, and for the reference to the rank of inspector there shall be substituted a reference to the rank of head constable

NOTES - ACT OF 1939

Construed as one. See the note to the Official Secrets Act 1920, s. 11, p. 302, *ante*

Official Secrets Acts 1911 and 1920. *i.e.*, the Official Secrets Act 1911, p. 250, *ante*, and the Official Secrets Act 1920, p. 294, *ante*; see s. 11 (1) of the Act of 1920, p. 302, *ante*

APPENDIX C

HALSBURY'S LAWS OF ENGLAND

Third Edition, Volume 10

SECT. 4. OFFENCES IN RESPECT OF OFFICIAL SECRETS

Penalties for spying. A person is by statute¹ guilty of felony² who, for any purpose prejudicial to the safety or interests of the state,³ (1) approaches, inspects, passes over or is in the neighbourhood of or enters any prohibited place,⁴ or (2) makes any sketch,⁵ plan, model,⁶ or note which is calculated to be or might be or is intended to be directly or indirectly useful to an enemy,⁷ or (3) obtains, collects, records, or publishes or communicates⁸ to any other person any secret official code word or pass word, or any sketch, plan, model, article, or note or other document⁹ or information which is calculated to be or might be or is intended to be directly or indirectly useful to an enemy

Meaning of prohibited place. For this purpose a prohibited place is defined as being, (2) any work of defence, arsenal, naval or air force establishment or station, factory, dockyard, mine, mine field, camp, ship, or aircraft belonging to or occupied by or on behalf of Her Majesty or any telegraph, telephone, wireless or signal station, or office so belonging or occupied, and any place belonging to or occupied by or on behalf of Her Majesty and used for the purpose of building, repairing, making, or storing any munitions of war, or any sketches, plans, models, or documents relating thereto, or for the purpose of getting any metals, oil, or minerals of use in time of war; (2) any place not belonging to Her Majesty where any munitions of war,¹⁰ or any sketches, models, plans, or documents¹¹ relating thereto, are being made, repaired, gotten, or stored under contract with, or with any person on behalf of, Her Majesty, or otherwise on behalf of Her Majesty; (3) any place belonging to or used for the purposes of Her Majesty¹² which is for the time being declared by order of a Secretary of State to be a prohibited place¹³ on the ground that information with respect thereto, or damage thereto, would be useful to an enemy; and (4) any railway, road, way, or channel, or other means of communication by land or water, including any works or structures being part thereof or connected therewith, or any place used for gas, water, or electricity works or other works for purposes of a public character, or any place where any munitions of war, or any sketches, models, plans or documents relating thereto, are being made, repaired, or stored otherwise than on behalf of Her Majesty, which is for the time being declared by order of a Secretary of State to be a prohibited place for the purposes of this section, on the ground that information with respect thereto, or the destruction or obstruction thereof, or interference therewith, would be useful to an enemy¹⁴

Effect of communication with foreign agents. In any proceedings against a person in respect of the offences described,¹⁵ the fact that he has been in communication with, or attempted to communicate with, a foreign agent, whether within or without the United Kingdom, is evidence that he has for a purpose prejudicial to the safety or interests of the state, obtained or attempted to obtain information which is calculated to be or might be or is intended to be directly or indirectly useful to an enemy¹⁶

Communication, etc., of information. A person is by statute¹⁷ guilty of a misdemeanour¹⁸ if he commits certain acts when he has in his possession or control any secret official code word or pass word, or any sketch,¹⁹ plan, model,²⁰ article, note, document,²¹ or information, (1) which is connected with a prohibited place²² or (2) which has been made or obtained in contravention of the Official Secrets Acts,²³ or (3) which has been entrusted to him in confidence²⁴ by a person holding office²⁵ under the Sovereign, or (4) which he has obtained or has had access to because he holds or has held office under the Sovereign or holds or has held a contract²⁶ made on behalf of the Sovereign, or because he is or has been employed by a person who holds or has held such an office or contract. In these circumstances an offence is committed if the person concerned (1) communicates²⁷ the code word, etc., to any person other than a person to whom he is authorised to communicate it or a person to whom it is, in the interest of the state his duty to communicate it, or (2) uses the information in his possession for the benefit of any foreign power or in a way prejudicial to the safety or interests of the state, or (3) retains the sketch, plan, model, article, note, or document in his possession or control when he has no right so to do or when it is contrary to his duty so to do, or fails to comply with lawful directions with regard to its return or disposal or (4) fails to take reasonable care of or so conducts himself as to endanger the safety of the sketch, plan, model, article, note, document, secret official code or pass word or information.²⁸

Communication of information relating to munitions. A person is by statute guilty of a misdemeanour²⁹ who having in his possession or control any sketch,³⁰ plan, model,³¹ article, note, document,³² or information relating to munitions of war, communications³³ it directly or indirectly to a foreign power or in any other way prejudicial to the safety and interests of the state³⁴

Wrongful receipt of sketch, etc. A person is by statute guilty of a misdemeanour³⁵ who receives any sketch,³⁶ secret official code word or pass word, or plan, model,³⁷ article, note, document,³⁸ or information, knowing or having reasonable ground to believe at the time of receipt, that the sketch, etc., is communicated³⁹ to him in contravention of the Official Secrets Acts, unless he proves that the communication was contrary to his desire.⁴⁰

Harbouring spies. A person is by statute guilty of a misdemeanour⁴¹ who (1) harbours any person whom he knows or has reasonable grounds for supposing to be a person about to commit or who has committed an offence against the Official Secrets Acts, or who (2) knowingly permits any such persons to meet or assemble in premises in his occupation or under his control, or who (3) having harboured such person or permitted such persons to meet or assemble in premises in his occupation or under his control, wilfully omits or refuses to disclose to a superintendent of police⁴² any information which it is in his power to give in relation to any such person.⁴³

Gaining admission to prohibited place, etc. A person is by statute⁴⁴ guilty of a misdemeanour⁴⁵ who for the purpose of gaining admission or helping another to gain admission to a prohibited place⁴⁶ or for any other purpose prejudicial to the safety and interests of the state⁴⁷ does any of the following acts:-

(1) Uses or wears without lawful authority any naval, military, air force, police or other official uniform or any uniform so

similar as to be calculated to deceive, or falsely represents himself to be a person who is or has been entitled to use or wear such uniform; or

(2) Orally or in writing knowingly makes or connives at the making of any false statement or omission in a declaration or application or any document signed by him or on his behalf; or

(3) Forges, alters, or tampers with a passport, or any naval, military, air force, police, or official pass, permit certificate, licence, or other official document, or uses or has in his possession any such forged, altered, or irregular official document;⁴⁸ or

(4) Personates or falsely represents himself to be a person holding office under the Queen or employed by such a person, or to be or not to be a person to whom an official document or secret official code word or pass word has been duly issued or communicated, or knowingly makes a false statement to obtain, whether for himself or any other person, an official document, secret official code word or pass word; or

(5) Uses or has in his possession or under his control without authority a die, seal, or stamp of, or belonging to, or used, made, or provided by, a government department or any diplomatic, naval, military or air force authority, appointed by or acting under the authority of the Queen, or any die, etc., so similar to those mentioned as to be calculated to deceive, or who counterfeits any such die, etc., or uses or has in his possession, or under his control, any such counterfeited die, etc., or

(6) Unlawfully makes, sells, or has in his possession for sale any such die, seal, or stamp.⁴⁹

Wrongful retention, etc., of official documents. A person is by statute guilty of a misdemeanour⁵⁰ who (1) for any purpose prejudicial to the safety or interests of the state⁵¹ wrongfully retains⁵² an official document,⁵³ whether or not completed or issued for use, or fails to comply with any authorised directions with regard to its return or disposal; or (2) who allows another to possess an official document issued for his use alone, or communicates⁵⁴ any secret official code word or pass word so issued, or unlawfully possesses an official document or secret official code word or pass word issued for the use of another, or who obtaining possession, by finding or otherwise, of an official document fails to give it to the person or authority by whom or for whose use it was issued or to a police constable.⁵⁵

Obstruction of police, etc., in prohibited places. A person is by statute guilty of a misdemeanour⁵⁶ who in the vicinity of a prohibited place⁵⁷ obstructs, knowingly misleads, or otherwise interferes with, or impedes the chief officer or a superintendent or other officer of police, or a member of Her Majesty's forces on duty in relation to the prohibited place.⁵⁸

Power of police to obtain information. Where a chief officer of police⁵⁹ is satisfied that there is reasonable ground for suspecting that an offence⁶⁰ has been committed and for believing that any person is able to furnish information as to the offence or suspected offence, he may, having applied for and obtained the permission of a Secretary of State, authorise any superintendent of police⁶¹ or any police officer not below the rank of inspector to require that person to give any information in his power relating to the offence or suspected offence, and, if so required and on tender of his reasonable expenses, to attend at such reasonable place as may be specified.⁶²

Where a chief officer of police has reasonable grounds to believe that the case is one of great emergency and that in the interest of the state immediate action is necessary, he may exercise this power without applying for permission but must forthwith report the circumstances to the Secretary of State.⁶³

Any person who fails to comply with any such requirement or knowingly gives false information is guilty of a misdemeanour.⁶⁴

Offences by corporations. Where a person guilty of an offence under the Official Secrets Acts is a company or corporation, every director and officer of the company or corporation is guilty of the like offence, unless he proves that the act or omission constituting the offence took place without his knowledge or consent.⁶⁵

Attempts, incitements, etc. A person who attempts to commit an offence under the Official Secrets Acts, or solicits or incites or endeavours to persuade another person to commit an offence, or aids or abets and does any act preparatory to the commission of that offence is guilty of a felony or a misdemeanour or a summary offence according to what the substantive offence is, and on conviction is liable to the same punishment and to be proceeded against in the same manner as if he had committed the offence.⁶⁶

Punishment. The punishment for the foregoing offences on conviction on indictment is, in the case of an offence declared to be a felony, imprisonment for not more than fourteen years, and, in the case of a misdemeanour, imprisonment for not more than two years.⁶⁷

Consent of law officer. Prosecutions for offences under the Official Secrets Acts can only be instituted with the consent of the Attorney General or Solicitor General,⁶⁸ but a person charged with such an offence may be arrested or a warrant for his arrest issued and executed, and he may be remanded in custody or on bail, notwithstanding that the consent has not been obtained.⁶⁹ Consent is necessary, however, before any further or other proceedings are taken.⁶⁹

Powers of arrest. A person found committing an offence under the Official Secrets Acts, or who is reasonably suspected of having committed or attempted to commit or to be about to commit any such offence, may be apprehended and detained in the same way as a person found committing a felony, whether the offence is a felony or not.⁷⁰

A justice of the peace who is satisfied by information on oath that there is reasonable ground for suspecting that an offence under the Official Secrets Acts has been or is about to be committed, may grant a search warrant authorising any constable named therein to enter at any time any premises or place named in the warrant, if necessary by force, and to search the premises or place and every person found therein and to seize any sketch, plan, model, article, note, or document or anything of a like nature or anything which is evidence of an offence having been or being about to be committed, which he may find on the premises or place or on any such person, and with regard to or in connection with which he has reasonable ground for suspecting that an offence has been or is about to be committed.⁷¹

A superintendent of police, to whom it appears that the case is one of great emergency and that in the interests of the state

immediate action is necessary, may by a written order under his hand give to any constable the like authority as may be given by the warrant of a justice.⁷²

Exclusion of public during hearing. In addition and without prejudice to any powers which a court may possess to order the exclusion of the public from any proceedings, if, in the course of proceedings before a court against any person for an offence under the Official Secrets Acts or the proceedings on appeal, or in the course of the trial of a person for felony or misdemeanour under those Acts, application is made by the prosecution on the ground that the publication of any evidence to be given or of any statement to be made in the course of the proceedings would be prejudicial to the national safety, that all or any portion of the public shall be excluded during any part of the hearing, the court may make an order to that effect.⁷³ The passing of the sentence, however, must in any case take place in public.⁷⁴

Production of telegrams. If it appears to him to be expedient in the public interest, a Secretary of State may, by warrant under his hand, require any person who owns or controls any telegraphic cable or wire or any apparatus for wireless telegraphy, used for the sending or receipt of telegrams to or from any place out of the United Kingdom,⁷⁵ to produce to him or to any person named in the warrant the originals and transcripts either of all telegrams or of telegrams of any specified class or description, or of telegrams sent from or addressed to any specified person or place, sent or received to or from any place out of the United Kingdom by means of any such cable, wire, or apparatus, and all other papers relating to any such telegram.⁷⁶

Accommodation addresses. Every person who carries on, whether alone or in conjunction with any other business, the business of receiving for reward letters, telegrams, or other postal packets for delivery or forwarding to the persons for whom they are intended must, as soon as possible, send to the chief officer of police for the district, for registration by him, notice of the fact, together with the address or addresses where the business is carried on.⁷⁷ The chief officer of police must keep a register of the names and addresses of such persons, and must, if required by any person who sends such a notice, furnish him, on payment of a fee of 1s., with a certificate of registration.⁷⁷ Every person so registered must, from time to time, furnish to the chief officer of police notice of any change of address or new address at which the business is carried on, and such other information as may be necessary for maintaining the correctness of the particulars entered in the register.⁷⁷

A person who carries on such a business must enter in a book kept for the purpose the following particulars: (1) the name and address of every person for whom any postal packet is received or who has requested the delivery or forwarding of such packets; (2) any instructions that may have been received as to the delivery or forwarding of postal packets; (3) in the case of a postal packet received, the place from which it comes and the date of posting (as shown by the postmark) and the date of receipt and the name and address of the sender if shown on the outside of the packet, and in the case of a registered packet, the date and office of registration and the number of the registered packet; (4) in the case of every postal packet delivered, the date of delivery and the name and address of the person to whom it is delivered; (5) in the case of

every postal packet forwarded, the name and address to which and the date on which it is forwarded.⁷⁸ Such a person must not deliver a letter to any person until that person has signed a receipt for the same in the book, or, if that person is not the person to whom the postal packet is addressed, unless the last-mentioned person has left signed instructions as to the delivery thereof, and unless written instructions to that effect, signed by the addressee, are left with such person, he must not forward any postal packet to another address.⁷⁸

The books so kept and all postal packets received by a person carrying on any such business, and any instruction as to the delivery or forwarding of postal packets received by any such person, must be kept at all reasonable times open to inspection by any police constable.⁷⁹

A person who contravenes or fails to comply with any of the foregoing provisions or who furnishes any false information or makes any false entry, is guilty of an offence and is liable, for each such offence, on summary conviction, to imprisonment for a term not exceeding one month, or to a fine not exceeding £10, or to both.⁸⁰

Extent of Acts and place of trial. Subject as stated afterwards,⁸¹ the Official Secrets Acts apply to all acts which are offences under their provisions, when committed in any part of Her Majesty's dominions or when committed by British officers or subjects elsewhere.⁸² An offence, if alleged to have been committed out of the United Kingdom, may be inquired of, heard, and determined in any competent British court in the place where the offence was committed, or in any county or place in England in which the accused is apprehended or may be in custody.⁸³

For the purposes of the trial of a person for an offence under the Official Secrets Acts, the offence will be deemed to have been committed either at the place in which it was actually committed or at any place in the United Kingdom in which the offender may be found.⁸⁴

Laws of British possessions. If by any law made by the legislature of any British possession provisions are made which appear to be of the like effect as those contained in the Official Secrets Act, 1911,⁸⁵ the operation of the latter Act, or any part thereof may be suspended within that possession, by Order in Council so long as that law continues in force there and no longer, and the Order will have effect as if it were enacted in the Official Secrets Act, 1911,⁸⁵ the suspension, however, will not extend to the holder of an office under Her Majesty⁸⁶ who is not appointed to that office by the government of that possession.⁸⁷ It has been expressly enacted that the Official Secrets Act, 1920,⁸⁸ is not to apply to Canada, Australia (including Papua and Norfolk Island), New Zealand, South Africa, India and Pakistan.⁸⁹

Communication of information concerning atomic energy. A person is by statute guilty of an offence who, without the consent of the Lord President of the Council,⁹⁰ communicates to any other person except one authorised by the Lord President to receive such information, any document, drawing, photograph, plan, model or other information whatever which to his knowledge describes, represents or illustrates (1) any existing or proposed plant⁹¹ used or proposed to be used for the purpose of producing or using atomic energy,⁹² (2) the purpose or method of operation of any such existing or proposed plant or (3) any process operated or proposed

to be operated in any such existing or proposed plant.⁹³ Such a person is liable (1), on conviction on indictment, to imprisonment for a term not exceeding five years, or to a fine not exceeding £500, or to both, or (2), on summary conviction, to imprisonment for a term not exceeding three months, or to a fine not exceeding £100, or to both.⁹⁴

Communication of information in respect of any plant of a type in use for purposes other than the production or use of atomic energy is excepted unless the information discloses that plant of that type is used or is proposed to be used for such production.⁹⁵

Where any information has been made available to the general public otherwise than in the course of the commission of this offence, any subsequent communication of that information does not constitute an offence.⁹⁶ The above provisions do not apply to anything done by or to the United Kingdom Atomic Energy Authority.⁹⁷

NOTES TO LAWS OF ENGLAND

¹Official Secrets Act, 1911 (1 & 2 Geo. 5 c. 28), s. 1 (1), Official Secrets Act, 1920 (10 & 11 Geo. 5 c. 75) ss. 10, 11, Schs. 1, 2. These two Acts and the Official Secrets Act, 1939 (2 & 3 Geo. 6 c. 121), are to be construed as one; see *ibid.*, s. 2 (1). Archives of a foreign embassy can be the subject of a charge under the Acts, an employee of such an embassy enjoys immunity, which can be waived by the ambassador; where the employee has been dismissed and the immunity waived, there can be no extension of immunity for a reasonable time to allow the ex employee to leave the country (*R. v. A.B.*, [1941] 1 K B 454, C. C. A.).

²There is power to convict of misdemeanour if the circumstances warrant such a finding (Official Secrets Act, 1911 (1 & 2 Geo. 5 c. 28), s. 5). For the punishment for felony under the Acts see Section on punishment, *post*.

³It is not necessary to prove a particular act tending to show a purpose prejudicial to the safety or interests of the state. It is sufficient if, from the circumstances of the case, or from the conduct or known character of the accused as proved, it appears that such was his purpose. Where any sketch (see note 5), plan, model (see note 6), article, note, document (see note 9), or information relating to or used in any prohibited place (see text, *infra*), or anything in such a place or any secret official code word or pass word is made, obtained, collected, recorded, published, or communicated (see note 8) by anyone other than a person acting under lawful authority, it will be deemed to have been made, etc., for such a purpose, unless the contrary is proved (Official Secrets Act, 1911 (1 & 2 Geo. 5 c. 28), s. 1 (2), as amended by the Official Secrets Act, 1920 (10 & 11 Geo. 5 c. 75), s. 10, Sch. 1). See *R. v. O'Grady* (1941), 28 Cr. App. R. 33.

⁴The meaning of "prohibited place," see *infra*. As to the premises of the United Kingdom Atomic Energy Authority, see note 12.

⁵"Sketch" includes any photograph or other mode of representing a place or thing (Official Secrets Act, 1911 (1 & 2 Geo. 5 c. 28), s. 12).

⁶"Model" includes design, pattern and specimen (*ibid.*, s. 12).

⁷"Enemy" includes a potential enemy with whom there might be war (*R. v. Parrott* 1913), 8 Cr. App. Rep. 186). The falsity of the information given is not material except as to possible

(defence of intent to mislead (*R. v. M* (1915), 32 T. L. R. 1, C C A.)

⁸Expressions relating to communicating or receiving include any communicating or receiving, whether in whole or in part, and whether the sketch, plan, model, article, note, document, or information itself or the substance, effect or description thereof only be communicated or received, expressions referring to obtaining or retaining any sketch, etc., include the copying or causing to be copied the whole or any part of the sketch, etc., and expressions referring to the communication of any sketch, etc., include the transfer or transmission of the sketch, etc. (Official Secrets Act, 1911 (1 & 2 Geo. 5 c. 28), s. 12).

⁹"Document" includes part of a document (*ibid.*, s. 12).

¹⁰"Munitions of war" includes the whole or any part of any ship, submarine, aircraft tank or similar engine, arms and ammunition, torpedo or mine, intended or adapted for use in war, and any other article, material or device, whether actual or proposed, intended for such use (*ibid.*, s. 12, Official Secrets Act, 1920 (11 & 12 Geo. 5 c. 75), s. 9 (2)).

¹¹For the meanings of "sketch," "model," "document," see notes 5, 6, and 9.

¹²Any reference to a place belonging to Her Majesty includes a place belonging to any department of the government of the United Kingdom or of any British possession, whether the place is or is not actually vested in Her Majesty (Official Secrets Act, 1911 (1 & 2 Geo. 5 c. 28), s. 12). Any place belonging to or used for the purpose of the United Kingdom Atomic Energy Authority is for this purpose deemed to be a place belonging to or used for the purposes of Her Majesty, and no person other than a constable or officer of customs and excise or inland revenue acting in the execution of his duty as such, or an officer of any government department especially authorised by or on behalf of a minister may exercise any right of entry (whether arising by virtue of any statutory provision or otherwise) upon any place belonging to or used for the purposes of the authority which is declared a prohibited place (see *infra*), except with the consent of the authority and subject to any conditions imposed by them (Atomic Energy Authority Act, 1954 (2 & 3 Eliz. 2 c. 32), s. 6 (3)). Any person aggrieved by a refusal of consent or by conditions imposed may apply to the Lord President of the Council who may authorise the exercise of that right subject to such conditions, if any, as he may think fit to impose (*ibid.* s. 6 (3) proviso). As to communication of information concerning atomic energy, see section on communication etc., *post*.

¹³The following orders made under this power are in force:— the Official Secrets (Ministry of Supply) Order, 1947, S. R. & O. 1947 No. 1357, the Official Secrets (Ministry of Supply) (No. 2) Order 1947, S. R. & O. 1947 No. 2355, the Official Secrets (Ministry of Supply) Order, 1949, S. I. 1949 No. 2315, the Official Secrets (Ministry of Supply) Order, 1950, No. 826, the Official Secrets (Prohibited Place) Order 1954, S. I. 1954 No. 243, the Official Secrets (Prohibited Place) (No. 2) Order, 1954, S. I. 1954 No. 1482.

¹⁴Official Secrets Act 1911 (1 & 2 Geo. 5 c. 28), s. 3, Official Secrets Act, 1920 (10 & 11 Geo. 5 c. 75), s. 10, Sch. 1.

¹⁵See section of penalties for spying, *ante*.

¹⁶Official Secrets Act, 1920 (10 & 11 Geo. 5 c. 75), s. 2 (1), by *ibid.*, s. 2 (2), for the purposes of the section but without prejudice to the generality of the statement in the text, the following provisions apply (see *ibid.*, s. 2) —(1) a person is, unless he proves the contrary, deemed to have been in communication with a

foreign agent or consorted or associated with him, or if the name or address of, or any other information regarding a foreign agent has been found in his possession or has been supplied by him to any other person or has been obtained by him from any other person, (2) "foreign agent" includes any person who is or has been or is reasonably suspected of being or having been employed by a foreign power either directly or indirectly for the purpose of committing an act, either within or without the United Kingdom, prejudicial to the safety or interests of the state, or who has or is reasonably suspected of having, either within or without the United Kingdom, committed or attempted to commit, such an act in the interests of a foreign power, (3) any address whether within or without the United Kingdom reasonably suspected of being an address used for the receipt of communications intended for a foreign agent, or any address at which a foreign agent resides, or to which he resorts for the purpose of giving or receiving communications, or at which he carries on any business, is deemed to be the address of a foreign agent, and communications addressed to such an address are communications with a foreign agent.

¹⁷Official Secrets Act, 1911, (1 & 2 Geo. 5 c. 28), s. 2 (1), Official Secrets Act, 1920 (10 & 11 Geo. 5 c. 75), ss. 9, 10, Sch. 1.

¹⁸As to punishment for the offense, see section on punishment *post*.

¹⁹For the meaning of "sketch" see note 5.

²⁰For the meaning of "model" see note 6.

²¹For the meaning of "document," see note 9.

²²See section on prohibited place, *ante*.

²³Offences under heads (2), (3), and (4) may be committed though the code word, etc., does not relate to a prohibited place (*R. v. Simington*, [1921] 1 K. B. 451, C. C. A.).

²⁴It is not necessary to prove that the information was entrusted especially in confidence to him (*R. v. Crisp and Home wood* (1919), 83 J. P. 121, C. C. A.).

²⁵This includes any office or employment in or under any department of the government of the United Kingdom or any British possession (Official Secrets Act, 1911 (1 & 2 Geo. 5 c. 28), s. 12), and membership of or any office or employment under the United Kingdom Atomic Energy Authority (Atomic Energy Act 1954 (2 & 3 Eliz. 2 c. 32), s. 6 (4), Sch. 3). A police officer holds office under the Sovereign (*Lewis v. Cattle*, [1938] 2 K. B. 454, D. C., [1938] 2 All E. R. 368).

²⁶This includes any contract with the United Kingdom Atomic Energy Authority (Atomic Energy Authority Act, 1954 (2 & 3 Eliz. 2 c. 32), s. 6 (4), Sch. 3).

²⁷See note 8.

²⁸Official Secrets Act, 1911 (1 & 2 Geo. 5 c. 28), s. 2 (1), Official Secrets Act, 1920 (10 & 11 Geo. 5 c. 75), ss. 9, 10, Sch. 1.

²⁹For punishment, see section on punishment *post*.

³⁰For the meaning of "sketch" see note 5.

³¹For the meaning of "model" see note 6.

³²For the meaning of "document" see note 9.

³³See note 8.

³⁴Official Secrets Act, 1911 (1 & 2 Geo. 5 c. 28), s. 2 (1A), Official Secrets Act, 1920 (10 & 11 Geo. 5 c. 75), s. 9.

³⁵For punishment, see section on punishment *post*.

³⁶For the meaning of "sketch" see note 5.

³⁷For the meaning of "model" see note 6.

³⁸For the meaning of "document" see note 9.

³⁹See note 8.

⁴⁰Official Secrets Act, 1911 (1 & 2 Geo. 5 c. 28), s. 2 (2).

Official Secrets Act, 1920 (10 & 11 Geo. 5 c. 75), s. 10, Sch 1

⁴¹For punishment, see section on punishment *post*.

⁴²"Superintendent of police" includes any police officer of like or superior rank and any person upon whom the powers of a superintendent of police are for this purpose conferred by a Secretary of State (Official Secrets Act, 1911 (1 & 2 Geo. 5 c. 28), s. 12, Official Secrets Act, 1920 (10 & 11 Geo. 5 c. 75), s. 10, Sch. 1)

⁴³Official Secrets Act, 1911 (1 & 2 Geo. 5 c. 28), s. 7; Official Secrets Act, 1920 (10 & 11 Geo. 5 c. 75) ss. 10, 11, Schs. 1, 2.

⁴⁴Official Secrets Act, 1920 (10 & 11 Geo. 5 c. 75), s. 1 (1), (2) (c)

⁴⁵For punishment, see section on punishment *post*.

⁴⁶See section defining prohibited place *ante*.

⁴⁷In the case of any prosecution involving the proof of such a purpose prejudicial to the safety and interests of the state, s. 1 (2) of the Official Secrets Act, 1911 (1 & 2 Geo. 5 c. 28) (see note 3), applies (Official Secrets Act, 1920 (10 & 11 Geo. 5 c. 75), s. 1 (3)).

⁴⁸"Document" includes part of a document (Official Secrets Act, 1911 (1 & 2 Geo. 5 c. 28), s. 12).

⁴⁹Official Secrets Act, 1920 (10 & 11 Geo. 5 c. 75), s. 1 (1), (2) (c)

⁵⁰For punishment, see section on punishment *post*.

⁵¹In the case of any prosecution under these provisions involving the proof of a purpose prejudicial to the safety or interests of the state, s. 1 (2) of the Official Secrets Act, 1911 (1 & 2 Geo. 5 c. 28) (see note 3), applies (Official Secrets Act, 1920 (10 & 11 Geo. 5 c. 75), s. 1 (3))

⁵²See note 8

⁵³See note 9.

⁵⁴See note 8

⁵⁵Official Secrets Act, 1920 (10 & 11 Geo. 5 c. 75), s. 1 (2) (a), (b)

⁵⁶For punishment, see section on punishment *post*.

⁵⁷See section on prohibited place, *ante*

⁵⁸Official Secrets Act, 1920 (10 & 11 Geo. 5 c. 75), s. 3.

⁵⁹Chief officer of police means in England the Commissioner of the City of London Police, the Commissioner of Police of the Metropolis or the Chief Constable as the case may be (Official Secrets Act, 1920 (10 & 11 Geo. 5 c. 75), s. 11 (3), applying the Police Act, 1890 (52 & 54 Vict. c. 45), s. 33, Sch. 3). The term includes for the present purpose any other officer of police expressly authorised by a chief officer of police to act on his behalf for this purpose when by reason of illness, absence or other cause he is unable to do so (Official Secrets Act, 1920 (10 & 11 Geo. 5 c. 75), s. 6 (3) Official Secrets Act, 1939 (2 & 3 Geo. 6 c. 121), s. 1).

⁶⁰Under s. 1 of the Official Secrets Act, 1911 (1 & 2 Geo. 5 c. 28)

⁶¹See note 43

⁶²Official Secrets Act, 1920 (10 & 11 Geo. 5 c. 75), s. 6 (1). Official Secrets Act, 1939 (2 & 3 Geo. 6 c. 121), s. 1

⁶³Official Secrets Act, 1920 (10 & 11 Geo. 5 c. 75), s. 1 (2); Official Secrets Act, 1939 (2 & 3 Geo. 6 c. 121), s. 1.

⁶⁴Official Secrets Act, 1920 (10 & 11 Geo. 5 c. 75), s. 6 (1); Official Secrets Act, 1939 (2 & 3 Geo. 6 c. 121), s. 1.

⁶⁵Official Secrets Act, 1920 (10 & 11 Geo. 5 c. 75), s. 8 (5).

⁶⁶*Ibid.*, s. 7 As to attempts, see *R. v. Olsson* (1915), 31 T. L. R. 559, C. C. A.

⁶⁷Official Secrets Act, 1920, (10 & 11 Geo. 5 c. 75), s. 8 (1).

(2); Criminal Justice Act, 1948 (11 & 12 Geo. 6 c. 58), s. 1. For power to fine, see p. 434 *ante*. A misdemeanour is punishable summarily by imprisonment for a term not exceeding three months, or by a fine not exceeding £50, or by both imprisonment and fine, but no misdemeanour can be so dealt with summarily except with the consent of the Attorney-General (*ibid.*, s. 8 (2)) As to "Attorney-General," see note 68.

⁶⁸Official Secrets Act, 1911 (1 & 2 Geo. 5 c. 28), s. 8, see also the Official Secrets Act, 1920 (10 & 11 Geo. 5 c. 75), s. 8 (2)). "Attorney General" means Attorney or Solicitor General for England (Official Secrets Act, 1911 (1 & 2 Geo. 5 c. 28), s. 12) The chief officer of police must report to the Director of Public Prosecutions all offences alleged to have been committed within his police district (Prosecution of Offences Regulations, 1946, S. R. & O. 1946 No. 1467, reg. 6 (2) (a) (ii)).

⁶⁹Official Secrets Act, 1911 (1 & 2 Geo. 5 c. 28), s. 8.

⁷⁰*Ibid.*, s. 6. As to powers of arrest generally, see pp. 342 *et seq.*, *ante*. A person may be arrested before the consent of the Attorney General or Solicitor-General to proceedings has been obtained; see p. 610, *ante*.

⁷¹Official Secrets Act, 1911 (1 & 2 Geo. 5 c. 28), s. 9 (1)

⁷²*Ibid.*, s. 9 (2). For the meaning of "superintendent of police," see note 43.

⁷³Official Secrets Act, 1920 (10 & 11 Geo. 5 c. 75), s. 8 (4)

⁷⁴*Ibid.*, s. 8 (4).

⁷⁵This term does not include the Republic of Ireland, see note (k), p. 565, *ante*.

⁷⁶Official Secrets Act, 1920 (10 & 11 Geo. 5 c. 75), s. 4 (1)

A person who, on being required to do so, refuses or neglects to produce any such original, or transcript or paper, is guilty of an offence, and for each offence is liable on conviction summarily to imprisonment for a term not exceeding three months, or to a fine not exceeding £50, or to both such imprisonment and fine (Official Secrets Act, 1920 (10 & 11 Geo. 5 c. 75), s. 4 (2)). "Telegram" has the same meaning as in the Telegraph Act, 1869 (32 & 33 Vict. c. 73), s. 3, and "wireless telegraphy" has the same meaning as in the Wireless Telegraphy Act, 1904 (4 Edw. 7 c. 24), s. 1 (7) (Official Secrets Act, 1920 (10 & 11 Geo. 5 c. 75), s. 4 (3)) S. 1 (7) of the Wireless Telegraphy Act, 1904 (4 Edw. 7 c. 24), has expired (see the Wireless Telegraphy Act, 1949 (12, 13 & 14 Geo. 6 c. 54), s. 18 (1)), and an extended meaning of wireless telegraphy appears in *ibid.*, s. 19 (1) See title *Telegraphs*.

⁷⁷Official Secrets Act, 1920 (10 & 11 Geo. 5 c. 75), s. 5 (1)

Nothing in this section applies to postal packets addressed to any office where any newspaper or periodical is published, being postal packets in reply to advertisements appearing in that newspaper or periodical (*ibid.*, s. 5 (5)). The section does not legalise anything which would be in contradiction of the exclusive privilege of the Postmaster-General under the Post Office Act, 1953 (1 & 2 Eliz. 2 c. 36) (see title *Post Office*), or the Telegraph Acts, 1863 to 1954 (see title *Telegraphs*) (Official Secrets Act, 1920 (10 & 11 Geo. 5 c. 75), s. 5 (6)).

⁷⁸*Ibid.*, s. 5 (2).

⁷⁹*Ibid.*, s. 5 (3).

⁸⁰Official Secrets Act, 1920 (10 & 11 Geo. 5 c. 75), s. 5 (4)

The user, as well as the keeper, of an accommodation address may be guilty of the offence of giving false information (*Stevenson v Fulton*, [1936] K. B. 320, D. C.).

⁸¹See *infra*

⁸²Official Secrets Act, 1911 (1 & 2 Geo. 5 c. 28), s. 10 (1)

⁸³Official Secrets Act, 1911 (1 & 2 Geo 5 c. 28), s. 10 (2) (applying the Criminal Jurisdiction Act, 1902 (42 Geo. 3 c. 85)); Official Secrets Act, 1920 (10 & 11 Geo. 5 c. 75), s. 8 (3); Administration of Justice (Miscellaneous Provisions) Act, 1933 (23 & 24 Geo. 5 c. 36), s. 1 (4), Sch. 1; Criminal Justice Act, 1948 (11 & 12 Geo. 6 c. 58), ss. 31 (2), (3), 83, Sch. 10, Pt. 1. Offences cannot be tried by any court of general or quarter sessions, or by the sheriff court in Scotland, or by any court out of the United Kingdom which has not jurisdiction to try crimes involving the greatest punishment allowed by law (Official Secrets Act, 1911 (1 & 2 Geo. 5 c. 28), s. 10 (3); Official Secrets Act, 1920 (10 & 11 Geo. 5 c. 75), s. 11 (1) (b)).

⁸⁴*Ibid.*, s. 8 (j).

⁸⁵1 & 2 Geo. 5 c. 28; for the Acts to be construed as one therewith, see note 1.

⁸⁶For the meaning of this expression, see note 25.

⁸⁷Official Secrets Act, 1911 (1 & 2 Geo. 5 c. 28), s. 11. See the Official Secrets (Commonwealth of Australia) Order in Council, 1915, S. R. & O. 1915 No. 1199, the Official Secrets (Mauritius) order in Council, 1916 (S. R. & O. Rev. 1948, Vol. XVI, p. 1130); the Official Secrets (Malta) Order in Council, 1923, S. R. & O. 1923 No. 650, the Official Secrets (India) Order in Council, 1923, S. R. & O. 1923 No. 1517 (as to the effect of the creation of the Dominions of India and Pakistan, see title *Commonwealth and Dependencies*, Vol. 5, p. 530); the Official Secrets (Straits Settlements) Order in Council, 1936, S. R. & O. 1936 No. 409 (as to the former Straits Settlements, see title *Commonwealth and Dependencies*, Vol. 5, p. 634; and, as to Penang and Malacca, see the Official Secrets (Penang and Malacca) Order in Council, 1950, S. I. 1950 No. 1779), the Official Secrets (Jersey) Order in Council, 1952, S. I. 1952 No. 1034.

An Order in Council dated 30th June 1890, as to the Isle of Man, made under the Official Secrets Act, 1889 (52 & 53 Vict. c. 52) (repealed), is probably no longer effective.

⁸⁸10 & 11 Geo. 5 c. 75.

⁸⁹*Ibid.*, s. 11 (1) (a), Indian Independence Act, 1947 (10 & 11 Geo. 6 c. 30) s. 18 (1), Newfoundland (Consequential Provisions) Act, 1950 (14 Geo. 6 c. 5), s. 1 (2), Schedule, Pt. II.

⁹⁰The functions of the Minister of Supply under the Atomic Energy Act, 1946 (9 & 10 Geo. 6 c. 80), were transferred to the Lord President of the Council by the Transfer of Functions (Atomic Energy and Radioactive Substances) Order, 1953, S. I. 1953 No. 1673. The Lord President may not withhold consent if satisfied that the information proposed to be communicated is not of importance for purposes of defence (Atomic Energy Act, 1946 (9 & 10 Geo. 6 c. 80), s. 11 (2)).

⁹¹"Plant" includes any machinery, equipment or appliance whether affixed to land or not (Atomic Energy Act, 1946 (9 & 10 Geo. 6 c. 80), s. 18 (1)).

⁹²"Atomic energy" means the energy released from atomic nuclei as a result of any process, including the fission process, but does not include energy released in any process of natural transmutation or radioactive decay which is not accelerated or influenced by external means (*ibid.*, s. 18 (1)). Any reference to the production or use of atomic energy is to be construed as including a reference to the carrying out of any process preparatory or ancillary to such production or use (*ibid.*, s. 18 (4)).

⁹³Atomic Energy Act, 1946 (9 & 10 Geo. 6 c. 80), s. 11 (1). The Lord President of the Council may by order grant exemption from this section in such classes of cases, and to such extent and

subject to such conditions, as may be specified in the order (*ibid.*, s. 11 (3)). For an order made under this power, see the Atomic Energy (Disclosure of Information) (No. 1) Order 1947, S. R. & O. 1947 No. 100.

⁹⁴Atomic Energy Act, 1946 (9 & 10 Geo. 6 c. 80), s. 14 (1). Where a person convicted on indictment is a body corporate, the provision limiting the amount of the fine does not apply, and a fine may be imposed on the body corporate of such amount as the court thinks just (*ibid.*, s. 14 (2)). Where an offence has been committed by a body corporate, every person who was at the time a director, general manager, secretary or other similar officer is deemed to be guilty of the offence, unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances (*ibid.*, s. 14 (3)). Proceedings in respect of an offence under *ibid.*, s. 11, cannot be instituted in England except by, or with the consent of, the Director of Public Prosecutions (*ibid.*, s. 14 (4)).

⁹⁵*Ibid.*, s. 11 (1) proviso.

⁹⁶*Ibid.*, s. 11 (4).

⁹⁷Atomic Energy Authority Act, 1954 (2 & 3 Eliz. 2 c. 32), s. 6 (4), Sch. 3.

APPENDIX D

STATUTES OF THE UNITED STATES

Volume 36

CHAP. 226.—An Act To prevent the disclosure of national defense secrets.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whoever, for the purpose of obtaining information respecting the national defense, to which he is not lawfully entitled, goes upon any vessel, or enters any navy yard, naval station, fort, battery, torpedo station, arsenal, camp, factory, building, office, or other place connected with the national defense, owned or constructed or in process of construction by the United States, or in the possession or under the control of the United States or any of its authorities or agents, and whether situated within the United States or in any place non-contiguous to but subject to the jurisdiction thereof, or whoever, when lawfully or unlawfully upon any vessel, or in or near any such place, without proper authority, obtains, takes, or makes, or attempts to obtain, take, or make, any document, sketch, photograph, photographic negative, plan, model, or knowledge of any thing connected with the national defense to which he is not entitled, or whoever, without proper authority, receives or obtains, or undertakes or agrees to receive or obtain, from any person, any such document, sketch, photograph, photographic negative, plan, model, or knowledge of anything connected with the national defense to which he is not entitled, or whoever, without proper authority, receives or obtains, or undertakes or agrees to receive or obtain, from any person, any such document, sketch, photograph, photographic negative, plan, model, or knowledge, knowing the same to have been so obtained, taken, or made, or whoever, having possession of or control over any such document, sketch, photograph, photographic negative, plan, model, or knowledge, willfully and without proper authority, communicates or attempts to

communicate the same to any person not entitled to receive it, or to whom the same ought not, in the interest of the national defense, be communicated at that time; or whoever, being lawfully intrusted with any such document, sketch, photograph, photographic negative, plan, model, or knowledge, willfully and in breach of his trust, so communicates or attempts to communicate the same, shall be fined not more than one thousand dollars, or imprisoned not more than one year, or both.

SEC 2 That whoever, having committed any offense defined in the preceding section communicates or attempts to communicate to any foreign government, or to any agent or employee thereof, any document, sketch, photograph, photographic negative, plan, model, or knowledge so obtained, taken, or made, or so intrusted to him, shall be imprisoned not more than ten years.

SEC 3 That offenses against the provisions of this Act committed upon the high seas or elsewhere outside of a judicial district shall be cognizable in the district where the offender is found or into which he is first brought; but offenses hereunder committed within the Philippine Islands shall be cognizable in any court of said islands having original jurisdiction of criminal cases, with the same right of appeal as is given in other criminal cases where imprisonment exceeding one year forms a part of the penalty; and jurisdiction is hereby conferred upon such courts for such purpose.

Approved, March 3, 1911

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- PP 1
Brown, George F. and Lloyd, Richmond M., "Static Models of Bank Credit Expansion," 27 pp., 23 Sep 1969, (Published in the Journal of Financial and Quantitative Analysis, Jun 1971) AD 703 925
- PP 2
Lando, Mordechai E., "The Sex-Differential in Canadian Unemployment Data," 5 pp., 9 Jan 1970, AD 699 512
- PP 3
Brown, George F.; Corcoran, Timothy M. and Lloyd, Richmond M., "A Dynamic Inventory Model with Delivery Lag and Repair," 16 pp., 1 Aug 1969, AD 699 513
- PP 4
Kadane, Joseph B., "A Moment Problem for Order Statistics," 14 pp., 13 Jan 1970, (Published in the Annals of Mathematical Statistics, Apr 1971) AD 699 514
- PP 5
Kadane, Joseph B., "Optimal Whereabouts Search," 28 pp., Oct 1969, (Published in the Journal of the Operations Research Society of America, Vol. XIX, 1971) AD 699 515
- PP 6 -- Classified
- PP 7
Friedheim, Robert L., "The Continental Shelf Issue at the United Nations: A Quantitative Content Analysis," 25 pp., 7 Jan 1970, (To be published in "Pacem in Maribus," edited by Elaine H. Burnell and Piers von Simson, Center for the Study of Democratic Institutions) (See also PP 28) AD 699 516
- PP 8
Rose, Marshall and White, Alex, "A Comparison of the Importance of Economic Versus Non-Economic Factors Affecting the Residential Housing Market During the Two Decades Subsequent to World War II," 128 pp., 15 Jan 1970, AD 699 517
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Rose, Marshall, "A Thesis Concerning the Existence of Excess Capacity at Naval Shipyards Prior to the Escalation of Hostilities in Southeast Asia in 1964," 67 pp., 9 Jan 1970, AD 699 518
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O'Neill, David M., "The Effect of Discrimination on Earnings: Evidence from Military Test Score Results," 19 pp., 3 Feb 1970, (Published in the Journal of Human Resources, Summer 1970) AD 703 926
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Brown, George F. and Lloyd, Richmond M., "Dynamic Models of Bank Credit Expansion Under Certainty," 29 pp., 3 Feb 1970, AD 703 931
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Overholt, John L., "Analysis Data Inputs and Sensitivity Tests in War Games," 30 pp., Mar 1971, AD 722 858
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Rose, Marshall, "Computing the Expected-End Product Service Time Using Extreme Value Properties of Sampling Distribution," 29 pp., 18 Feb 1970, (Published in Operations Research, Mar-Apr 1971) AD 702 451
- PP 16
Rose, Marshall, "Study of Repairable Item Re-supply Activities," 35 pp., 18 Feb 1970, AD 702 452
- PP 17
Brown, Lee (Lt., USN) and Rose, Marshall, "An Incremental Production for the End-Item Repair Process," 17 pp., 3 Mar 1970, (Published in Annual Conference of the American Institute of Industrial Engineers Transactions, May 1970, Cleveland, Ohio) AD 702 453
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- PP 19
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Silverman, Lester P., "Resource Allocation in a Sequential Flow Process," 21 pp., 5 Mar 1970, AD 702 457
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Gorlin, Jacques, "Israeli Reprisal Policy and the Limits of U.S. Influence," 27 pp., 23 Mar 1970, AD 703 534
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Rose, Marshall, "An Aircraft Rework Cost-Benefit Model," 13 pp., 12 Mar 1970, (Published in the 5th Annual DoD Cost Research Symposium Proceedings, Mar 1970) AD 702 514
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Lloyd, Richmond and Sutton, S. Scott, "An Application of Network Analysis to the Determination of Minimum Cost Aircraft Pipeline Factors," 51 pp., 31 Mar 1970, (Presented at NATO Conference on Problems in the Organization and Introduction of Large Logistic Support Systems, May 1970, Luxembourg) AD 703 536
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Saperstone, Stephen, "An Approach to Semi-Markov Processes," 38 pp., 23 Mar 1970, AD 703 537
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Brown, George F. and Corcoran, Timothy M., "The Reliability of a Complex System with Spares, Repair, and Cannibalization," 45 pp., 23 Mar 1970, AD 703 538
- PP 27
Fain, Janice B.; Fain, William W.; Feldman, Leon and Simon, Susan, "Validation of Combat Models Against Historical Data," 18 pp., 14 Apr 1970, (Published in 9th Symposium of the National Gaming Council Proceedings, Apr 1970) AD 704 744
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Saperstone, Stephen H., "Controllability of Linear Oscillatory Systems Using Positive Controls," 27 pp., Apr 1970, AD 704 745

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DeVany, Arthur S., "The Effect of Social Policy on the Social and Private Value of a Child," 20 pp., 27 Apr 1970, AD 704 746
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DeVany, Arthur S., "Time in the Budget of the Consumer," 51 pp., 27 Apr 1970, AD 704 747
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Overholt, John L., "Fitting Korean War Data by Statistical Method," 11 pp., 5 May 1970, (Presented at the 9th Symposium of the National Gaming Council, Apr 1970, Washington, D.C.) AD 705 349
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DeVany, Arthur S., "A Theory of Household Demand and Labor Supply," 23 pp., 5 May 1970, AD 705 350
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Kadane, Joseph B. and Fisher, Franklin M.*, "The Covariance Matrix of the Limited Information Estimator and the Identification Test: Comment," 6 pp., 14 May 1970, (To be published in *Econometrica*) AD 706 310
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Lando, Morderchai E., "Full Employment and the New Economics--A Comment," 4 pp., 14 May 1970, (Published in the *Scottish Journal of Political Economy*, Vol. XVII, Feb 1969) AD 706 420
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DeVany, Arthur S., "Time in the Budget of the Consumer: The Theory of Consumer Demand and Labor Supply Under a Time Constraint," 151 pp., 15 Jun 1970, AD 708 348
- PP 37
Kadane, Joseph B., "Testing a Subset of the Over-identifying Restrictions," 7 pp., 19 Jun 1970, (To be published in *Econometrica*) AD 708 349
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Saperstone, Stephen H., "The Eigenvectors of a Real Symmetric Matrix are Asymptotically Stable for Some Differential Equation," 19 pp., Jul 1970, AD 708 502
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Schick, Jack M., "Conflict and Integration in the Near East: Regionalism and the Study of Crises," 43 pp., Oct 1970, (Presented at the 66th Annual Meeting of the American Political Science Association, Sep 1970)
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Brown, George F. and Lloyd, Richmond M., "Fixed Shortage Costs and the Classical Inventory Model," 13 pp., Jul 1970, AD 713 057

CNA Professional Papers - Cont'd.

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Hardy, William C. and Blyth, T. S.*, "A Coordination of Lattices by One-Sided Baer Assemblies," 21 pp., Jul 1970, (To be published by the Royal Society of Edinburgh)
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Gray, Burton C., "Writeup for B34TCNA-A Step-Wise Multiple Regression Program," 15 pp., Oct 1970, AD 713 029
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Friedheim, Robert L., "International Organizations and the Ures of the Ocean," 88 pp., Oct 1970, (To be published in Volume of Essays on International Administration, Oxford University Press AD 714 387
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Friedheim, Robert L. and Kadane, Joseph B., "Ocean Science in the United Nations Political Arena," 45 pp., Jun 1971, AD 731 865
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Forst, Brian E., "A Decision-Theoretic Approach to Medical Diagnosis and Treatment," 14 pp., Nov 1970, (Presented at the Fall 1970 11th American Meeting of the Institute of Management Sciences, Oct 1970, Los Angeles, California) AD 714 651
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Kadane, Joseph B., "On Division of the Question," 12 pp., Nov 1970, (Published in Public Choice, Fall 1971) AD 714 652
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Kadane, Joseph B., "How to Burgle If You Must: A Decision Problem," 13 pp., May 1971, AD 723 850
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Dyckman, Zachary Y., "An Analysis of Negro Employment in the Building Trades," 309 pp., Jan 1971
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Lando, Mordechai E., "Health Services in the All Volunteer Armed Force," 33 pp., Jan 1971, (Published in Studies Prepared for the President's Commission on an All-Volunteer Force, Government Printing Office, Nov 1970) AD 716 899
- PP 61
Robinson, Jack, "Classification Management Training and Operations, An Approach," 14 pp., Jul 1971, (Presented at the 7th Annual Seminar, National Classification Management Society, Washington, D.C., 13-16 Jul 1971) AD 727 719

28

CNA Professional Papers - Cont'd.

- PP 62
Brown, George F. and Schwartz, Arnold N., "The Cost of Squadron Operation: A Theoretical and Empirical Investigation," 10 pp., Jan 1971 (Published in the Transactions of the 1971 American Association of Cost Engineers International Meeting, Jun 1971) AD 722 377
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Lockman, Robert F., "Analyses of Selection and Performance Measures for CNA Support Personnel," 45 pp., Feb 1971, AD 720 360
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O'Neill, David M.; Gray, Burton C. and Horowitz, Stanley, "Educational Equality and Expenditure Equalization Orders: The Case of Hobson V. Hansen," 43 pp., Feb 1971, AD 720 362
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Schwartz, Arnold N.; Sheler, James A. (LCdr) and Cooper, Carl R. (Cdr), "Dynamic Programming Approach to the Optimization of Naval Aircraft Rework and Replacement Policies," 39 pp., Mar 1971, (To be published in the Naval Research Logistics Quarterly) AD 720 363
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Kuzmack, Richard A., "Measures of the Potential Loss from Oil Pollution," 16 pp., Mar 1971, (Published as Chapter 13 in Legal, Economic, and Technical Aspects of Liability and Financial Responsibility as Related to Oil Pollution, The George Washington University, Dec 1970) AD 722 378
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Blechman, Barry M. and Holt, James, T., "Cost/Effectiveness Analysis of Foreign Policy Alternatives: Need, Approach, and Prospects," 41 pp., Mar 1971, (Presented at the 1971 Western Regional Meeting of the International Studies Association, Mar 1971) AD 722 379
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Rogers, Warren F. (Cdr), "Exact Null Distributions of Rank Test Statistics," 47 pp., Mar 1971, AD 722 380
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Rogers, Warren F. (Cdr), "On A Theorem of Weyl," 17 pp., Mar 1971, AD 722 381
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Lloyd, Richmond M., "Dynamic Programming Models of Short Term Bank Reserve Management," 233 pp., Mar 1971, AD 727 724
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Kadane, Joseph B. and Iversen, Gudmund R.*, "Estimation of Multinomial Process When Only the Sum and the Number Governed by Each Process is Observed," 13 pp., Apr 1971, AD 722 382
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Victor A. Utgoff and Kashyap, R.L.*, "On Behavior Strategy Solutions in Two-Person Zero-Sum Finite Extended Games with Imperfect Information, Part II: Determination of a Minimally Complex Behavior Strategy Solution in a Medical Decision Process," 22 pp., May 1971, (Accept for publication in the SIAM Journal on Applied Mathematics) AD 723 851
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Stoloff, Peter H., "The Navy Personal Response Program: Review, Evaluation and Recommendations," 22 pp., Jul 1971, AD 727 725

CNA Professional Papers – Cont'd.

- PP 76
Canes, Michael E., "Measurement and Selection of Defense," 21 pp., Aug 1971, AD 731 868
- PP 77
McConnell, James M., "The Soviet Navy in the Indian Ocean," 16 pp., Aug 1971, AD 731 869
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Blechman, Barry M., "A Quantitative Description of Arab-Israeli Interactions, 1949-1969: Data Sets and Processor," 43 pp., Sep 1971, AD 731 870
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Weinland, Robert G., "The Changing Mission Structure of the Soviet Navy," 15 pp., Nov 1971, AD 734 077
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- PP 82
Forst, Brian E., "A Doctor's Introduction to Decision Analysis," 22 pp., Nov 1971, (Presented at the Engineering Foundation Conference on Quantitative Decision Making for the Delivery of Ambulatory Care, 22 Jul 1971) AD 732 556
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Weiher, Rodney and Horowitz, Stanley A., "The Relative Costs of Formal and On-the-Job Training for Navy Enlisted Occupations," 44 pp., Nov 1971, AD 734 857
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Brown, Jr. George F., "Comparison of Forecast Accuracy When the Disturbances Are Small: Directly Estimated Reduced Forms vs. K-Class Induced Reduced Forms," 17 pp., Dec 1971, AD 736 355
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Harrison, Robert A., "Multivariate Regression Analysis and Slaughter Livestock," 33 pp., Dec 1971, AD 736 356
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Harkins, James A., "Computer Software: A Major Weapon System Component," 9 pp., Jan 1972, (Presented at the Washington Chapter ACM 10th Annual Symposium, 24 Jun 71, National Bureau of Standards, Gaithersburg, Md.) AD 736 357
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Lockman, Robert F., "An Evaluation of the Applicant Interview Form for CNA Support Jobs," 19 pp., Mar 1972
- PP 89
Barney, Gerald O., "System Dynamics and the Analysis of Social Policy," 27 pp., Apr 1972, (Presented at the XIX International Meeting of the Institute of Management Sciences, Apr 4-8, 1972, Houston, Tex.)
- PP 90
Heider, Dr. Charles H., "An N-Step, 2-Variable Search Algorithm for the Component Placement Problem," 58 pp., Apr 1972
- PP 91
Piersall, Jr. Charles H. and Borgstrom, Robert E., "Cost Analysis of Optional Methods of Shipboard Domestic Waste Disposal," 23 pp., Apr 1972, (To be presented at the Annual Northeast Regional Anti-pollution Conference at the University of Rhode Island, Jul 1972)
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Forst, Brian E., "Decision Analysis and Medical Malpractice," 30 pp., May 1972, (Presented at the 41st National Meeting of the Operations Research Society of American, New Orleans, La., 27 Apr 1972)

CNA Professional Papers - Cont'd.

PP 93

Zedlewski, Edwin W., "Estimation and Inference in Binary Response Regressions," 52 pp., May 1972.

PP 94

Weinland, Robert G., "Soviet Transits of the Turkish Straits: 1945-1970—An Historical Note on the Establishment and Dimensions of the Soviet Naval Presence in the Mediterranean," 20 pp., 14 Apr 1972.

PP 95

Robinson, Jack, "The British Official Secrets Act, An Examination," 23 pp., Jul 1972, (Presented at the 8th Annual Seminar, National Classification Management Society, 18-20 Jul 1972, Palo Alto, Calif.)