

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

SCOTLAND ACT 1998

EXPLANATORY NOTES

SCHEDULES

SCHEDULE 8, Paragraph 26: Official Secrets Act 1989

Details of Provisions

The Official Secrets Act 1989 makes it an offence in certain circumstances, for a person who is or has been a Crown servant or a government contractor within the meaning of that Act, to disclose without lawful authority information which relates to: security and intelligence, defence; international relations; or crime and special investigation. A disclosure by a Crown servant is made with lawful authority if it is made in accordance with his official duty. A disclosure by a government contractor is made with lawful authority if it is made in accordance with an official authorisation or without contravening an official restriction. Again “official authorisation” and “official restriction” are defined in the Act.

Section 12(1) of the Official Secrets Act 1989 defines what is meant by Crown Servant for the purposes of the 1989 Act. The definition covers Ministers of the Crown and anyone employed in the civil service of the Crown, as well as members of the military forces, the police or holders of prescribed offices and members and employees of prescribed bodies. The amendment will extend the definition to cover members of the Scottish Executive and junior Scottish Ministers. This amendment is required because otherwise offences created by the 1989 Act would not catch members of the Scottish Executive but it would catch their staff by virtue of section 12(1)(c). It will ensure that the Scottish Ministers are able to receive and if necessary authorise disclosure of information covered by the 1989 Act and puts them in the same position as Ministers in the UK government.

Section 12(2) defines what is meant by a government contractor. The definition includes any person who is not a Crown servant but who provides goods or services for the purposes of any Minister or of the civil service, armed forces etc. The amendment makes clear that the definition of Government contractor includes anyone who provides goods and services for the purposes of any office-holder in the Scottish Administration.

The order-making power in section 12 has also been executively devolved to the Scottish Ministers by [S.I. 1999/1750](#).