The Scottish Government introduced the Criminal Cases (Punishment and Review) (Scotland) Bill in the Parliament on 30 November 2011. It contains provisions in relation to two distinct issues:

- Part 1 of the Bill seeks to amend some of the statutory rules used by courts when calculating the “punishment part” of a life sentence (ie the period a life sentence prisoner must serve in custody before being eligible to apply for release on parole). The Scottish Government’s proposals in this area are in response to the decision of the High Court of Justiciary in the case of Petch & Foye v HM Advocate (2011)

- Part 2 of the Bill seeks to establish a framework under which the Scottish Criminal Cases Review Commission may disclose information about cases it has referred to the High Court of Justiciary where the relevant appeal has subsequently been abandoned. The Scottish Government’s proposals in this area were prompted by the case of Abdelbaset Al-Megrahi, who was convicted of murder following the Lockerbie bombing

This briefing considers the provisions in Part 2 of the Bill.

A separate SPICe briefing, dealing with the provisions in Part 1, was published on 25 January 2012: Criminal Cases (Punishment and Review) (Scotland) Bill: Custodial Sentences.
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EXECUTIVE SUMMARY

- The role of the Scottish Criminal Cases Review Commission (“the Commission”) is to review and investigate cases where it is alleged that a miscarriage of justice may have occurred. After a review has been completed, the Commission will decide whether or not the case should be referred to the High Court. If the Commission decide to refer a case, if accepted, the case will be heard and determined by the High Court as if it were a normal appeal. Where the Commission makes a reference to the High Court, it is required to give the court a statement of reasons for making the reference and to send a copy of the statement to every person who appears likely to be a party to the appeal.

- In general, any information obtained by the Commission may not be disclosed, and it is an offence under section 194J of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) to do so. Exceptions from obligations of non-disclosure of information held by the Commission are included at section 194K of the 1995 Act. They provide that information may be disclosed for, amongst other things, the purposes of any criminal or civil proceedings. The Scottish Ministers also have, by virtue of section 194K(1)(f) of the 1995 Act, an order-making power to set out circumstances in which the normal non-disclosure rules that the Commission are subject to may be disapplied. This power has been used, with the Scottish Criminal Cases Review Commission (Permitted Disclosure of Information) Order 2009 (“the 2009 Order”) specifying additional circumstances in which the Commission may disclose information, or authorise the disclosure of information, without committing an offence in terms of section 194J(3) of the 1995 Act.

- Given the wider public interest issues raised in the case of Abdelbaset al-Megrahi who was convicted of the Lockerbie bombing in 2001, the Scottish Government used the order-making power in the 1995 Act to make the Scottish Criminal Cases Review Commission (Permitted Disclosure of Information) Order 2009. This provided a mechanism for the Commission to work towards considering releasing information in the al-Megrahi case. However, on 9 December 2010, the Commission issued a news release explaining that it had been unable to obtain the relevant consent from all those who provided information contained in the statement of reasons and as such, was unable to publish it.

- The Bill provides that, in circumstances where an appeal against conviction has been abandoned or has otherwise fallen following a Commission referral, the Commission may disclose information relating to the case where they determine that it is appropriate to do so. Essentially, the difference between the 2009 Order and the statutory framework set out in the Bill is that whereas consent of those who provided information is required in terms of the 2009 Order, the Bill, in general, does not require consent to be obtained and instead it is for the Commission to decide whether it is appropriate to disclose information.

- The Commission has intimated to the Scottish Government that reserved data protection legislation will be a significant obstacle to the disclosure of information as provided for in the Bill. To that end, the Scottish Government has been in correspondence with the UK Government with a view to having the relevant data protection provisions disapplied.
The Scottish Criminal Cases Review Commission ("the Commission") was established by section 194A of the Criminal Procedure (Scotland) Act 1995 ("the 1995 Act"). The Commission's role is to review and investigate criminal cases where it is alleged that a miscarriage of justice may have occurred in relation to a conviction, a sentence or both. Where it concludes that there has been a miscarriage of justice, it must also determine whether or not it is in the interests of justice that a reference should be made to the High Court for the purposes of a possible appeal.

Where the Commission makes a reference to the High Court, it is required to give the court a statement of reasons for making the reference and to send a copy of the statement to every person who appears likely to be a party to the appeal.

In general, any information (including the statement of reasons) obtained by the Commission may not be disclosed, and it is an offence under section 194J of the 1995 Act to do so. However, exceptions from obligations of non-disclosure of information held by the Commission are included at section 194K of the 1995 Act. They provide that information may be disclosed for, amongst other things, the purposes of any criminal or civil proceedings. The Scottish Ministers also have, by virtue of section 194K(1)(f) of the 1995 Act, an order-making power to set out circumstances in which the normal non-disclosure rules that the Commission are subject to may be disapplied. This power has been used, with the Scottish Criminal Cases Review Commission (Permitted Disclosure of Information) Order 2009 ("the 2009 Order") specifying additional circumstances in which the Commission may disclose information, or authorise the disclosure of information, without committing an offence in terms of section 194J(3) of the 1995 Act.

Those circumstances are that:

(a) the information has been obtained by the Commission in connection with a case that it has referred to the High Court, but the appeal has been abandoned;

(b) any person who provided the information to the Commission (whether directly or indirectly) has consented to its disclosure; and

(c) the decision to disclose the information is taken by the Commission.

The 2009 Order was originally brought forward by the Scottish Government given the wider public interest issues in the case of Abdelbaset Mohamed al-Megrahi.

THE AL-MEGRAHI CASE

The Policy Memorandum to the Bill points out that there has been considerable interest in the Commission's referral in June 2007 of the case of Abdelbaset Mohamed al-Megrahi, who was convicted of the Lockerbie bombing in 2001 (para 51). Accordingly, in June 2007, the Commission issued a fuller news release than would be normal when it announced that the case had been referred to the High Court. At that point, the Commission had no statutory basis upon which to make the relevant statement of reasons public. (It is understood that the statement of reasons in the al-Megrahi case runs to over 800 pages and is accompanied by a further thirteen volumes of appendices). However, as required by the 1995 Act, the Commission

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1 As inserted by section 25 of the Crime and Punishment (Scotland) Act 1997.
2 See section 194D(4) of the 1995 Act.
sent a statement of reasons for its referral of the case to relevant parties in the case; namely the High Court, the Crown Office and Procurator Fiscal Service and Mr al-Megrahi himself. As set out above, the disclosure by the Commission of the statement of reasons in the al-Megrahi case to the relevant parties was in line with section 194K(1)(a) of the 1995 Act where disclosure of information is excepted from general non-disclosure requirements if the disclosure is for the purposes of any criminal or civil proceedings.

Following the referral of his case by the Commission, Mr al-Megrahi was able to lodge an appeal against his conviction. The appeal was subsequently abandoned in August 2009. Although some of the material contained in the Commission’s statement of reasons was heard in open court during court proceedings while the appeal was live, the appeal did not reach a stage before it was abandoned whereby the substantive content of the statement of reasons was heard in open court.

As stated above, given the wider public interest issues raised in the case of Mr al-Megrahi, the Scottish Government used the order-making power in the 1995 Act to make the Scottish Criminal Cases Review Commission (Permitted Disclosure of Information) Order 2009. This provided a mechanism for the Commission to work towards considering releasing information in the al-Megrahi case. However, on 9 December 2010, the Commission issued a news release explaining that it had been unable to obtain the relevant consent from all those who provided information contained in the statement of reasons and as such, was unable to publish it. The Commission had agreed that they would, in principle, be prepared to consider the release and publication of the statement of reasons provided it could obtain the consent of the relevant parties. Gerard Sinclair, Chief Executive of the Commission stated:

“As I indicated at the time the above Order (the 2009 Order) came into force, in order to release our Statement of Reasons the Commission would require the consent of those who had, either directly or indirectly, provided the information.

Over the last nine months I have been in ongoing correspondence and, in some instances, discussion with a number of the main parties who were responsible, either directly or indirectly, for providing information to the Commission. I asked them if they were prepared to provide their consent, in writing, to the disclosure of the information contained within our Statement of Reasons. This included Crown Office, the Foreign Office, the relevant police authorities, as well as Mr Al Megrahi and his legal representatives.

It has become obvious that there is no likelihood of obtaining the unqualified consent required in terms of the 2009 Order, and consequently the Board decided at its last meeting to discontinue discussions at this time.

The Commission will be happy to revisit this matter if the 2009 Order is varied and the requirement to obtain the consent of the parties is removed.” (Scottish Criminal Cases Review Commission 2010)

In January 2011, the Cabinet Secretary stated, in response to a Parliamentary Question from Christine Grahame MSP, that:

“The Scottish Government intends to bring forward legislation to allow the Scottish Criminal Cases Review Commission to publish a statement of reasons in cases where an appeal is abandoned, subject of course to legal restrictions applying to the Commission such as data protection, the convention rights of individuals and international obligations attaching to information provided by foreign authorities”. (Scottish Parliament 2011)
Subsequently, the Scottish Government introduced the Criminal Cases (Punishment and Review) (Scotland) Bill in the Parliament on 30 November 2011. Part 2 of the Bill seeks to establish a framework under which the Commission may disclose information about cases it has referred to the High Court of Justiciary where the relevant appeal has subsequently been abandoned. Key aspects of Part 2 of the Bill are outlined below.

THE BILL

There has been no formal consultation on either part of the Bill although the Scottish Government has consulted informally with the Scottish Criminal Cases Review Commission in relation to Part 2. The Scottish Government has stressed that, in relation to Part 2 of the Bill, its approach to the case of Mr al-Megrahi is to be as open and transparent as possible given the wider public interest in the case. The Policy Memorandum to the Bill states:

“We announced our intention to bring forward legislation in this area in February 2011 and Ministers have repeated the policy intentions of the Bill’s provisions on a number of occasions since. We have informally consulted the Commission who have offered views that have been considered as the Bill provisions have been developed.” (para 67)

Part 2 of the Bill provides that, in circumstances where an appeal against conviction has been abandoned or has otherwise fallen following a referral, the Commission may disclose information relating to the case where they determine that it is appropriate to do so. In doing so, it seeks to provide the Commission with wider powers of disclosure than already contained within the 2009 Order.

In determining where it is appropriate to disclose information, the Commission is required to consult with those affected by, or who otherwise have an interest in, the information being considered for disclosure. This would include those who have provided the information and those to whom the information relates.

The decision on whether it is appropriate for information held by the Commission to be disclosed will rest with the Commission under the proposed statutory framework. It is important to point out that the Bill does not require the Commission to release information, nor does it automatically mean that information will be disclosed. The Bill sets out a framework within which the Commission itself determines whether it is appropriate to release information. The statutory framework also sets out the functions and duties that the Commission must follow in determining whether it is appropriate to release information, including a statement of reasons.

The Scottish Government has also considered the possibility of simply varying the 2009 Order (see above) to remove the consent provision, thereby extending the Commission’s powers to disclose information in relation to a case. The Policy Memorandum states:

“An alternative approach would have been to use the existing power in section 194K(1)(f) of the 1995 Act to provide simply an exception to the offence in 194J where the Commission could disclose information relating to an appeal against conviction which has been abandoned or otherwise fallen, without consent, where the Commission considers it appropriate to do so, without providing a detailed legislative framework setting out how the Commission should undertake this task. However, given the potential for sensitivities to exist with regards the disclosure of information relating to an appeal against conviction, we believe it is necessary and appropriate that the Bill should set out

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3 The Bill does not seek to extend the current powers of the Commission to disclose information relating to an alleged miscarriage of justice concerning a sentence but not conviction.
the functions and duties of the Commission in considering whether the disclosure of information is appropriate.

In particular, the Bill requires that all those who are affected by, or otherwise have an interest in, the information (e.g. because they provided the information to the Commission, or because the information relates to them) are consulted on the release of the information and have an opportunity to make representations to the Commission. By providing this framework, the Bill's provisions balances the rights of those who are mentioned in, or gave information contained in, a Statement of Reasons with wider public interest aims of openness and transparency.

We consider Parliament should have full scrutiny powers over the proposed framework for the Commission. As such, we think the legislative process attached to primary legislation is appropriate for the Parliamentary scrutiny of the framework.” (paras 63-65)

Essentially, the difference between the 2009 Order and the statutory framework set out in the Bill is that whereas consent of those who provided information is required in terms of the 2009 Order, the Bill, in general, does not require consent to be obtained and instead it is for the Commission to decide whether it is appropriate to disclose information.4 There is one exception to this and that is where the information that is being considered for disclosure has been obtained from foreign authorities under international assistance arrangements. For this type of information, the consent of the foreign authority that provided the information is required before the Commission can disclose it. This provision is intended to ensure that international obligations are not breached. The Scottish Government has also stated that disclosing information obtained from foreign authorities without their consent could risk undermining the operation of existing mutual legal assistance arrangements which in turn, could adversely affect efforts to tackle crime, including serious organised crime, in the future. (Policy Memorandum para 56)

Where the Commission decides that it is appropriate to release information, the Bill requires that all those who are affected by, or otherwise have an interest in, the information (e.g. because they provided the information to the Commission, or because the information relates to them) are consulted on the release of the information and have an opportunity to make representations to the Commission. The Scottish Government considers that by providing this framework, the Bill’s provisions balance the rights of those who are mentioned in, or gave information contained in a statement of reasons with wider public interest aims of openness and transparency (Policy Memorandum, para 64).

If the Commission decides that it is appropriate to disclose information, the Bill requires the Commission (so far as practicable) to notify all affected persons of the possibility that the information may be disclosed and seek views from each of them. The Bill provides that a six-week period must elapse following notification of the intention to disclose the information before any information can be released. This period can be extended by the Commission. However, if the Commission cannot reasonably ascertain the whereabouts of a particular person, the prescribed time limits do not apply. The reasoning behind these notification requirements are, that as disclosure of information would be irreversible, the notification mechanism will ensure that affected persons and interested persons are aware of what the Commission is planning to do in terms of disclosure and will have time to take whatever steps they deem necessary (including legal action) in respect of the forthcoming disclosure.

‘Affected persons’ and ‘other interested persons’ are defined in section 194N(5) of the Bill. References to an ‘affected person’ are to a person to whom the information pertains (e.g. a suspect or witness in the investigation) or from whom information has been obtained.

4 Should the Bill as introduced be passed, the 2009 Order will be revoked.
References to ‘other interested persons’ are to the Lord Advocate, and to other persons who the Commission consider have a substantial interest in the question of whether the information should be disclosed, and who do not fall within the definition of an ‘affected person’. The effect of including the Lord Advocate as an interested person is that in every case where the Commission is considering whether it is appropriate to disclose information, the Lord Advocate will always be notified.

Where the Commission decides that it is appropriate to disclose information, the Bill provides that the Commission must explain the context in which the information is being disclosed. It is intended that this will aid general understanding of the wider context of the case for which the information is being disclosed and help to ensure that information being disclosed is properly interpreted. If the Commission decides that it would be appropriate to disclose some but not all information in relation to a case, it will be required to state this explicitly. Again, this is to aid general understanding of context and ensure that the information is interpreted as being part of a wider set of information.

The Scottish Government has indicated that it has been advised by the Commission that reserved data protection legislation will prove to be a significant obstacle to the disclosure of information as provided for in the Bill. (Scottish Government 2011)

The Policy Memorandum to the Bill states that:

“Statutory requirements contained in legislation such as the Data Protection Act 1998 and the Official Secrets Acts are not affected by the provisions in this Bill and these statutory requirements are likely to be relevant in considering the disclosure of information. Other potential obstacles to disclosure of information will remain such as ensuring that the ECHR is not breached.” (para 58)

Following the introduction of the Bill, the Cabinet Secretary for Justice, Kenny MacAskill MSP, wrote to the Secretary of State for Justice and Lord Chancellor Kenneth Clarke QC MP on 1 December 2011 asking the UK Government to take action to remove any data protection obstacles which might prevent the Commission from disclosing information under the framework proposed by the Bill. The Cabinet Secretary’s letter acknowledges that data protection legislation exists for a purpose but emphasises that the wider public interest in the case of Mr al-Megrahi in particular, is unique in many ways, and that the Scottish Government believes there is a compelling and genuine public interest justification for making an exception to data protection legislation in this case and that such an exception would not set a wider precedent.

Mr Clarke responded to the Cabinet Secretary’s letter on 13 December 2011. In his response, Mr Clarke stated that if his officials were required to provide a detailed view on the questions relating to data protection legislation raised by the Cabinet Secretary they would need to know more about what type of personal data was included in the Commission’s statement of reasons. This would, he noted, allow his officials to reach a view on whether the Data Protection Act (DPA) was indeed the obstacle that the Commission perceived it to be.

On 20 December 2011, the Convener of the Scottish Parliament’s Justice Committee, Christine Grahame MSP, wrote to the Cabinet Secretary for Justice seeking clarification on, amongst other things, what he and his officials understood the potential data protection obstacles to be. In his reply, the Cabinet Secretary stated that although the Scottish Government had not seen the statement of reasons, based on discussions with the Commission, the Government’s understanding was that data protection obstacles which currently exist, and which would not be affected by the Bill, relate to ‘personal data’ and ‘sensitive personal data’.

The following section of this briefing examines the possibility of such issues as data protection having an effect on the Bill’s stated intention.
DATA PROTECTION, ETC

As outlined above, the Bill has no impact on the need for the Commission to adhere to reserved legislation such as data protection, and the Commission will also have to continue to consider relevant ECHR rights when considering whether to disclose information. Such restrictions could significantly reduce the practical impact of the Bill in terms of extending the Commission’s disclosure powers. The Scottish Government has stated:

“We are meeting our commitment to do what we can to enable the release of information. But we cannot legislate on reserved matters. That is why we have written to the UK Government asking that they disapply data protection legislation so that the Commission is further freed up by other statutory obstacles in deciding whether it is appropriate to disclose information.” (Scottish Government 2011)

Data Protection

As stated above, no-one, apart from the relevant parties under the 1995 Act, has seen the information which is contained within the Commission’s statement of reasons in the al-Megrahi case. However, given that the Commission has intimated to the Scottish Government that reserved data protection legislation will be a significant obstacle to the disclosure of information, it is reasonable to assume that the statement of reasons in the al-Megrahi case will contain personal data and/or sensitive personal data as set out in the Data Protection Act 1998 (“the DPA”).

The Commission’s website notes that the Commission aims to comply with the requirements of the DPA. These include the eight data protection principles set out in Schedule 1 to the DPA:

1. Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless:

   (a) at least one of the conditions in Schedule 2 is met, and

   (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met (see below)

2. Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes

3. Personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed

4. Personal data shall be accurate and, where necessary, kept up to date

5. Personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes

6. Personal data shall be processed in accordance with the rights of data subjects under this Act

7. Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data
8. Personal data shall not be transferred to a country or territory outside the European Economic Area unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data.

The conditions set out in Schedules 2 and 3 to the DPA are known as the “conditions for processing”\(^5\). Unless a relevant exemption applies, at least one of the following conditions must be met whenever organisations process personal data:

- the individual who the personal data is about has consented to the processing
- the processing is necessary:
  - in relation to a contract which the individual has entered into; or
  - because the individual has asked for something to be done so they can enter into a contract
- the processing is necessary because of a legal obligation that applies to you (except an obligation imposed by a contract)
- the processing is necessary to protect the individual’s “vital interests”. This condition only applies in cases of life or death, such as where an individual’s medical history is disclosed to a hospital’s A&E department treating them after a serious road accident
- the processing is necessary for administering justice, or for exercising statutory, governmental, or other public functions
- the processing is in accordance with the “legitimate interests” condition

Processing, in relation to information or data is defined in section 1 of the DPA as obtaining, recording or holding the information or data or carrying out any operation or set of operations on the information or data, including:

- organisation, adaptation or alteration of the information or data
- retrieval, consultation or use of the information or data
- disclosure of the information or data by transmission, dissemination or otherwise making available
- alignment, combination, blocking, erasure or destruction of the information or data

In the context of the Commission and the Bill, processing would refer to the potential disclosure of the information.

For the purposes of the DPA “personal data” is information which relates to living individuals who can be identified from the data (or from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller) and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual. In relation to the statement of reasons in the al-Megrahi case, the data controller would be the Commission which would be responsible for determining the purposes for which, and the manner in which, any personal data are to be processed or not.

‘Sensitive personal data’ is any personal data consisting of information as to an individual’s:

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\(^5\) Compliance with these conditions does not, in itself, ensure that the processing is fair and lawful – fairness and lawfulness must still be looked at separately.
- racial or ethnic origin
- political opinions
- religious beliefs or other beliefs of a similar nature
- membership of a trade union
- physical or mental health or condition
- sexual life

It is important to note that the *explicit* consent of the individual who is the subject of the data will usually have to be obtained before sensitive data can be processed, unless the controller (e.g. the Commission) can show that the processing is necessary based on one of the criteria laid out in Schedule 3 of the DPA.

Notwithstanding the observation above that it is difficult to comment specifically on aspects of the DPA which might be engaged in relation to the Commission if the Bill is passed, it is reasonable to assume that at least some of the information above is likely to be pertinent in terms of the Commission’s requirement to comply with the DPA and would be engaged in relation to the statement of reasons in the al-Megrahi case.

As data protection legislation is reserved, it would be for the UK Government and Parliament to accede to the Scottish Government’s request for specific data protection provisions to be disapplied so as to enable the Commission to release information under the statutory framework in the Bill. As the proposed framework in the Bill would only allow the Commission to release information in cases where an appeal against conviction has been abandoned or otherwise fallen following a Commission referral, it is reasonable to assume that the Scottish Government would expect any disapplication of data protection legislation to be similarly narrowly defined. However, should such a disapplication be considered, this may also have implications for the Criminal Cases Review Commission which investigates possible miscarriages of justice in England, Wales and Northern Ireland.

**Official Secrets and ECHR Issues**

The Policy Memorandum to the Bill also points out that the Official Secrets Acts and the European Convention on Human Rights (ECHR) are likely to be relevant in considering the disclosure of information by the Commission. Again, in the absence of a clear indication of the specific provisions which may be engaged, and without having access to the Commission’s statement of reasons in the al-Megrahi case, it is difficult to assess definitively whether any of the provisions contained within the legislation would be engaged by the Commission when disclosing information under the framework proposed by the Bill.

With regard to ECHR issues, the Policy Memorandum points out that the disclosure of information by the Commission could give rise to issues in relation to Convention rights, particularly Article 8 of the ECHR – the right to respect for private and family life. Article 8 is a broad-ranging right that is often closely connected with other rights such as freedom of religion, freedom of expression, freedom of association and the right to respect for property. The obligation on the State under Article 8 is to refrain from interfering with the right itself and also to take some positive measures, for example, to criminalise extreme breaches of the right to a private life by private individuals. Respect for one’s private life includes:
• respect for individual sexuality (so, for example, investigations into the sexuality of members of the armed forces engages the right to respect for a private life)

• the right to personal autonomy and physical and psychological integrity, i.e. the right not to be physically interfered with

• respect for private and confidential information, particularly the storing and sharing of such information

• the right not to be subject to unlawful state surveillance

• respect for privacy when one has a reasonable expectation of privacy; and

• the right to control the dissemination of information about one’s private life, including photographs taken covertly

As the Commission is a public authority within the meaning of section 6(3) of the Human Rights Act 1998, and therefore may not act incompatibly with Convention rights, it is reasonable to assume that Article 8 may be engaged in relation to the disclosure information under the framework proposed by the Bill.

It should be pointed out that Article 8 is a qualified right and as such the right to a private and family life and respect for the home and correspondence may be limited. So while the right to privacy is engaged in a wide number of situations, the right may be lawfully limited. Any limitation must have regard to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole.

In particular any limitation must be in accordance with law, necessary and proportionate; and for one or more of the following legitimate aims:

• the interests of national security

• the interests of public safety or the economic well-being of the country

• the prevention of disorder or crime

• the protection of health or morals; or

• the protection of the rights and freedoms of others

With regard to the Official Secrets Acts, the following provides a brief overview of provisions contained within the Official Secrets Act 1989 which may be relevant.

The Official Secrets Act 1989 (“the 1989 Act”) came into force on 1 March 1990. It applies to Crown servants, including government ministers, civil servants, members of the armed forces and the police. Government contractors are also covered, as are other members of the public and others who are not Crown servants or government contractors but who have, or have had, official information in their possession.

Under the 1989 Act it is an offence to disclose official information within six specified protected categories, but only if the disclosure is damaging to the national interest. The six categories are:

• security and intelligence

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

The 1989 Act sets different tests for what amount to damage to the national interests for each of the six categories of information.

Again, it would be for the UK Government to decide on whether any amendments to the 1989 Act (and/or related legislation) could (or should) be made in light of the proposals put forward by the Scottish Government in the Bill.
SOURCES


RELATED BRIEFINGS

SB 12-08 Criminal Cases (Punishment and Review) (Scotland) Bill: Custodial Sentences

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