



## Legislation to Counter State Threats Consultation Submission

Reporters Without Borders – known internationally as Reporters Sans Frontières (RSF) – is an international non-profit organisation working to promote and defend journalistic freedom, independence and pluralism around the world.

RSF's UK bureau is submitting this response to the Home Office consultation in follow up to our earlier detailed joint submission, along with English PEN and Index on Censorship, to the Law Commission's Consultation on the Protection of Official Data in 2017.<sup>1</sup>

We welcome the opportunity to respond to the present consultation on legislation that is indeed long overdue for reform; however, we are alarmed by a number of the Home Office's proposals, which would represent regressive measures, not modernisation as the Home Office has stated is its intent in reforming the law.

We are particularly concerned by the Home Office's decision not to support the inclusion of a Public Interest Defence. Without this provision, no journalist, journalistic source, whistleblower or publisher would be able to defend themselves if charged under the Official Secrets Acts - a prospect that becomes even more alarming when combined with the possibility of a lengthy prison sentence. It is RSF's view that the need to include a Public Interest Defence is one of the most crucially necessary areas of reform.

We are deeply concerned by the Home Office's wilful miscategorisation of journalistic activity as "hostile activity" and "espionage". Further, the possibility of a prison sentence of up to 14 years for a journalist simply for doing their job is nothing short of alarming and has no place in any modern democracy.

Each of these measures would serve to create a distinct chilling effect on public interest reporting, ultimately impacting the public's right to information and damaging the press freedom climate in the UK, which is ranked 33rd out of 180 countries in RSF's 2021 World Press Freedom Index.<sup>2</sup> These measures would also seriously undermine ongoing efforts by the Government to address threats to the safety of journalists.<sup>3</sup> Further, these measures would set a dangerous international precedent, and severely undermine the Government's efforts in recent years to champion media freedom globally.<sup>4</sup>

We urge the Government to reconsider these worrying proposals and ensure that such regressive measures are not included in the forthcoming draft legislation, and instead ensure

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<sup>1</sup> <https://rsf.org/en/news/free-expression-groups-call-public-interest-defence-uk-official-secrets-laws>

<sup>2</sup> <https://rsf.org/en/ranking>

<sup>3</sup> <https://www.gov.uk/government/groups/national-committee-for-the-safety-of-journalists>

<sup>4</sup> <https://www.gov.uk/government/publications/media-freedom-coalition-an-overview/media-freedom-coalition-an-overview>

the reformed legislation includes strong protections for journalism and press freedom, starting with a Public Interest Defence.

Below, we will briefly address three of the Home Office's specific questions most directly related to our key areas of concern from a press freedom perspective, focusing on the Official Secrets Act 1989 reform.

*7. Do you agree that maximum sentences for some offences under the Official Secrets Act 1989 should be increased?*

RSF strongly disagrees that maximum sentences should be increased for journalists, journalistic sources, whistleblowers, and publishers working in the public interest. The prospect of journalists serving prison sentences for simply receiving leaked information or engaging in other journalistic activity that is part and parcel of their jobs is alarming, and such a provision should have no place in this law or indeed in any modern democracy. RSF emphasises the need for any reformed legislation to include strong protections for journalists - including a Public Interest Defence - not increase their level of risk.

*18. Do you have a view on whether a Public Interest Defence should be a necessary part of future legislation?*

RSF strongly believes that the inclusion of a Public Interest Defence is a crucially necessary reform and is deeply concerned that the Home Office has decided not to support this provision despite the widespread responses received to the earlier public consultation and the Law Commission's own recommendation on this point.<sup>5</sup> Failing to include a Public Interest Defence would leave journalists, journalistic sources, whistleblowers and publishers highly vulnerable and create a distinct chilling effect on public interest reporting - in particular, national security reporting - ultimately impacting the public's right to information. Reforming the Official Secrets Acts without the inclusion of a Public Interest Defence would not only present a damaging missed opportunity, but would send a clear signal of the Government's intention to prosecute and otherwise create serious risks for journalists and others working in the public interest.

*19. Do you have any views or evidence you'd like to provide on any of the other final Law Commission recommendations, or the Government's response, in Annex B?*

We wish to note our frustration over the manner in which consultation processes related to the Official Secrets Acts have been conducted, recalling the Law Commission's failure to meaningfully consult civil society before publishing its 326-page consultation paper in February 2017; the extensive delay in responding to the public consultation that followed, which took nearly three and a half years; and the manner in which the current Home Office consultation has been presented and structured, all of which have created barriers to meaningful scrutiny and engagement from key stakeholders such as journalists and NGOs, as well as the wider public.

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<sup>5</sup> <https://www.lawcom.gov.uk/project/protection-of-official-data/>

We also wish to make the final point that these worrying proposed measures must be viewed in the broader context of a series of regressive moves that have damaged the UK's press freedom climate in recent years and have made it increasingly difficult for journalists to do their jobs, including, notably, the adoption of the menacing Investigatory Powers Act in 2016, which lacks the necessary safeguards for journalists, journalistic sources and whistleblowers despite widespread calls for such provisions from groups such as RSF.<sup>6</sup> With journalists and journalism under greater attack than ever before, it is crucial that the Government enact concrete measures to actively protect journalists, not increase risks for journalists through the adoption of further regressive legislation.

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<sup>6</sup><https://rsf.org/en/news/rsf-welcomes-european-court-judgment-finding-uks-mass-surveillance-regime-threatening-protection>