

Q&A HIGH SECURITY ZONE ORDER NO 1 OF 2022

What is the Official Secrets Act?

The Official Secrets Act No. 32 of 1955 is an archaic law in our statute books, [said to be based](#) on a much criticized and now abolished 1911 Official Secrets Act in the United Kingdom. The purpose of the Act is to '*restrict access to official secrets and secret documents and to prevent unauthorized disclosure thereof*'. The provisions of the act are outdated and draconian and create leeway for the abuse of power, suppression of dissent and violation of fundamental rights.

There have been instances of previous governments threatening to use the Act to [suppress information](#) and [intimidate journalists](#). While High Security Zones (HSZs) have previously been established in Sri Lanka under the Public Security Ordinance and the Prevention of Terrorism Act, the use of the Official Secrets Act to establish HSZs sets a worrying precedent and is outside the scope of the Act.

What can be done under the Official Secrets Act?

The Official Secrets Act *inter alia* allows the Minister of Defence to;

- declare a 'prohibited place',
- prohibits a person entrusted with an official secret from disclosing it, and
- creates certain additional restrictions, offences and procedural powers related to these main functions.

A 'prohibited place' is one that is declared for the purpose of '*the better safeguarding of information relating to the defence of Sri Lanka and to the equipment, establishments, organizations or institutions intended to be or capable of being used for the purposes of defence*'. The kinds of places that can be declared as prohibited for this purpose are '*any land, building, ship or aircraft*' as per an order of the Minister of Defence.

Once a place is declared 'prohibited', several restrictions contained in the act come into operation. These include;

- The prohibition of entry into such a place unless in discharging an official duty or with a permit (Section 3);
- It is an offence to 'obstruct or knowingly mislead, or otherwise interfere with or impede' officers guarding such place (Section 4);
- Makes it an offence to take a camera or sketching materials into such place unless it is in the discharge of a duty, or by an official residing in such place, or is with a permit (Section 5); and

- Makes it an offence to 'spy', including approaching or inspecting the place or taking a photograph 'for a purpose prejudicial to the State' (Section 6).

An offence under the Act carries heavy prison sentences of up to 14 years.

Can the President / Minister of Defence create High Security Zones under the Official Secrets Act?

The Official Secrets Act only provides the Minister of Defence to order certain places to be prohibited places. The act does not give the Minister the power to declare HSZs, nor to provide regulations for the management of the same, or the power to delegate the Secretary to the Ministry of Defence the power to issue commands. The President/Minister of Defence thus does not have the power to make such regulations, which are clearly *ultra vires* the Official Secrets Act.

HSZs have been previously been declared by way of Emergency Regulations under the Public Security Ordinance, and while there are several serious problems with the PSO, it must be borne in mind that regulations made thereunder must be approved by Parliament within 2 weeks, and if not, cease to be valid. In the case of these regulations, however, there is no such oversight.

What does the Gazette (High Security Zone Order 1 of 2022) do?

This Gazette creates 'High Security Zones' in several parts of the greater Colombo area, which ultimately covers a large portion of the city. The 6 areas surrounding the;

- a. Parliament Complex,
- b. Courts and Attorney-General's Department in Hulftsdorp,
- c. Presidential Secretariat, President's House, Sri Lanka Navy Headquarters and Police Headquarters,
- d. The Ministry of Defence and Sri Lanka Army Headquarters in Akuregoda,
- e. Sri Lanka Air Force Headquarters in Slave Island,
- f. Prime Minister's Office on Flower Road,
- g. Temple Trees in Kollupitiya
- h. Official Residencies of the Secretary to the Ministry of Defence and the Commanders of Tri Forces.

Does the Gazette (High Security Zone Order 1 of 2022) create 'prohibited places'?

It must be noted the zones created by the gazette are not 'prohibited places' as the Minister of Defence is permitted to declare under the Act. They are instead styled/designated as "High Security Zones". Nothing in the act suggests that it allows the creation of an entire zone.

How does the High Security Zone Order 1 of 2022 regulate these newly created HSZs?

While purporting to be made under the Official Secrets Act, this Gazette does several things that exceed the already wide powers granted under the Act. This includes;

- The Act only allows for certain places to be declared prohibited places, solely for the purpose of safeguarding information relating to defence, the gazette creates 'High Security Zones' (HSZs).
- Allowing the Secretary to the Ministry of Defence, as the 'competent authority' under the regulations, to make provisions for regulating activities within the zone and issuing commands for their implementation (Regulation 4).
- Prohibiting any construction or excavation within the HSZ or parking within the HSZs reserved by the Secretary to the MOD or with a permit (Regulation 6).
- It shall be '*lawful for the Inspector General of Police to implement the provisions of these orders and when required, performing certain tasks mechanically or otherwise or the use of vehicles or another medium for that purpose shall also be lawful*' (as per Regulation 8). This is both vague and appears to grant the IGP new and wide powers.
- The Police are given powers to inspect and interrogate under the Regulations with no restrictions on said powers specified,
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- The chief occupant of buildings, or employers (government or private) within the zone can be made to provide a list of all permanent or temporary occupants/employees to the police (Regulations 10 and 11);
- Giving police the powers to enter premises within the HSZ for inspections (Regulation 12)
- The prevention of lighting fireworks within the HSZs.

Does High Security Zone Order 1 of 2022 create new offences?

Yes, the regulations create new offences which are not covered by the act and which have nothing to do with safeguarding information relating to the defence of Sri Lanka. Violation of any of the orders contained in the High Security Zone Order 1 of 2022 shall constitute an offence.

The High Security Zone Order 1 of 2022 also makes it difficult to obtain Bail for anyone arrested under its provisions.

A person can be arrested without a warrant and once arrested bail can only be granted by the High Court (Regulation 9).

Can fundamental rights guaranteed by the Constitution be restricted in this manner?

The fundamental rights guaranteed under the Constitution, including the freedom of movement, the freedom of expression and the freedom of association can only be restricted in limited instances and has to be done by law, enacted by Parliament. The only instance in which these rights can be restricted by regulations is if it is done by Emergency Regulations, and '*in the interests of national security, public order and the protection of public health or morality, or for the purpose of securing due recognition and respect for the rights and freedoms of others, or of meeting the just requirements of the general welfare of a democratic society.* (Article 15(7) of the Constitution)'. Thus, it is not permissible to restrict fundamental rights by way of regulations made under any other law.