



# Computer Misuse Act 1990

## 1990 CHAPTER 18

### *Jurisdiction*

#### **4 Territorial scope of offences under this Act**

- (1) Except as provided below in this section, it is immaterial for the purposes of any offence under section 1 or 3 above—
  - (a) whether any act or other event proof of which is required for conviction of the offence occurred in the home country concerned; or
  - (b) whether the accused was in the home country concerned at the time of any such act or event.
- (2) Subject to subsection (3) below, in the case of such an offence at least one significant link with domestic jurisdiction must exist in the circumstances of the case for the offence to be committed.
- (3) There is no need for any such link to exist for the commission of an offence under section 1 above to be established in proof of an allegation to that effect in proceedings for an offence under section 2 above.
- (4) Subject to section 8 below, where—
  - (a) any such link does in fact exist in the case of an offence under section 1 above; and
  - (b) commission of that offence is alleged in proceedings for an offence under section 2 above;section 2 above shall apply as if anything the accused intended to do or facilitate in any place outside the home country concerned which would be an offence to which section 2 applies if it took place in the home country concerned were the offence in question.
- (5) This section is without prejudice to any jurisdiction exercisable by a court in Scotland apart from this section.
- (6) References in this Act to the home country concerned are references—
  - (a) in the application of this Act to England and Wales, to England and Wales;

- (b) in the application of this Act to Scotland, to Scotland; and
- (c) in the application of this Act to Northern Ireland, to Northern Ireland.

## **5 Significant links with domestic jurisdiction**

- (1) The following provisions of this section apply for the interpretation of section 4 above.
- (2) In relation to an offence under section 1, either of the following is a significant link with domestic jurisdiction—
  - (a) that the accused was in the home country concerned at the time when he did the act which caused the computer to perform the function; or
  - (b) that any computer containing any program or data to which the accused secured or intended to secure unauthorised access by doing that act was in the home country concerned at that time.
- (3) In relation to an offence under section 3, either of the following is a significant link with domestic jurisdiction—
  - (a) that the accused was in the home country concerned at the time when he did the act which caused the unauthorised modification; or
  - (b) that the unauthorised modification took place in the home country concerned.

## **6 Territorial scope of inchoate offences related to offences under this Act**

- (1) On a charge of conspiracy to commit an offence under this Act the following questions are immaterial to the accused's guilt—
  - (a) the question where any person became a party to the conspiracy; and
  - (b) the question whether any act, omission or other event occurred in the home country concerned.
- (2) On a charge of attempting to commit an offence under section 3 above the following questions are immaterial to the accused's guilt—
  - (a) the question where the attempt was made; and
  - (b) the question whether it had an effect in the home country concerned.
- (3) On a charge of incitement to commit an offence under this Act the question where the incitement took place is immaterial to the accused's guilt.
- (4) This section does not extend to Scotland.

## **7 Territorial scope of inchoate offences related to offences under external law corresponding to offences under this Act**

- (1) The following subsections shall be inserted after subsection (1) of section 1 of the Criminal Law Act 1977—
  - “(1A) Subject to section 8 of the Computer Misuse Act 1990 (relevance of external law), if this subsection applies to an agreement, this Part of this Act has effect in relation to it as it has effect in relation to an agreement falling within subsection (1) above.
  - (1B) Subsection (1A) above applies to an agreement if—
    - (a) a party to it, or a party's agent, did anything in England and Wales in relation to it before its formation; or

- (b) a party to it became a party in England and Wales (by joining it either in person or through an agent); or
- (c) a party to it, or a party's agent, did or omitted anything in England and Wales in pursuance of it;

and the agreement would fall within subsection (1) above as an agreement relating to the commission of a computer misuse offence but for the fact that the offence would not be an offence triable in England and Wales if committed in accordance with the parties' intentions.”.

(2) The following subsections shall be inserted after subsection (4) of that section—

“(5) In the application of this Part of this Act to an agreement to which subsection (1A) above applies any reference to an offence shall be read as a reference to what would be the computer misuse offence in question but for the fact that it is not an offence triable in England and Wales.

(6) In this section “computer misuse offence” means an offence under the Computer Misuse Act 1990.”.

(3) The following subsections shall be inserted after section 1(1) of the Criminal Attempts Act 1981—

“(1A) Subject to section 8 of the Computer Misuse Act 1990 (relevance of external law), if this subsection applies to an act, what the person doing it had in view shall be treated as an offence to which this section applies.

(1B) Subsection (1A) above applies to an act if—

- (a) it is done in England and Wales; and
- (b) it would fall within subsection (1) above as more than merely preparatory to the commission of an offence under section 3 of the Computer Misuse Act 1990 but for the fact that the offence, if completed, would not be an offence triable in England and Wales.”.

(4) Subject to section 8 below, if any act done by a person in England and Wales would amount to the offence of incitement to commit an offence under this Act but for the fact that what he had in view would not be an offence triable in England and Wales—

- (a) what he had in view shall be treated as an offence under this Act for the purposes of any charge of incitement brought in respect of that act; and
- (b) any such charge shall accordingly be triable in England and Wales.

## **8 Relevance of external law**

(1) A person is guilty of an offence triable by virtue of section 4(4) above only if what he intended to do or facilitate would involve the commission of an offence under the law in force where the whole or any part of it was intended to take place.

(2) A person is guilty of an offence triable by virtue of section 1(1A) of the Criminal Law Act 1977 only if the pursuit of the agreed course of conduct would at some stage involve—

- (a) an act or omission by one or more of the parties; or
- (b) the happening of some other event;

constituting an offence under the law in force where the act, omission or other event was intended to take place.

- (3) A person is guilty of an offence triable by virtue of section 1(1A) of the Criminal Attempts Act 1981 or by virtue of section 7(4) above only if what he had in view would involve the commission of an offence under the law in force where the whole or any part of it was intended to take place.
- (4) Conduct punishable under the law in force in any place is an offence under that law for the purposes of this section, however it is described in that law.
- (5) Subject to subsection (7) below, a condition specified in any of subsections (1) to (3) above shall be taken to be satisfied unless not later than rules of court may provide the defence serve on the prosecution a notice—
  - (a) stating that, on the facts as alleged with respect to the relevant conduct, the condition is not in their opinion satisfied;
  - (b) showing their grounds for that opinion; and
  - (c) requiring the prosecution to show that it is satisfied.
- (6) In subsection (5) above “the relevant conduct” means—
  - (a) where the condition in subsection (1) above is in question, what the accused intended to do or facilitate;
  - (b) where the condition in subsection (2) above is in question, the agreed course of conduct; and
  - (c) where the condition in subsection (3) above is in question, what the accused had in view.
- (7) The court, if it thinks fit, may permit the defence to require the prosecution to show that the condition is satisfied without the prior service of a notice under subsection (5) above.
- (8) If by virtue of subsection (7) above a court of solemn jurisdiction in Scotland permits the defence to require the prosecution to show that the condition is satisfied, it shall be competent for the prosecution for that purpose to examine any witness or to put in evidence any production not included in the lists lodged by it.
- (9) In the Crown Court the question whether the condition is satisfied shall be decided by the judge alone.
- (10) In the High Court of Justiciary and in the sheriff court the question whether the condition is satisfied shall be decided by the judge or, as the case may be, the sheriff alone.

## **9 British citizenship immaterial**

- (1) In any proceedings brought in England and Wales in respect of any offence to which this section applies it is immaterial to guilt whether or not the accused was a British citizen at the time of any act, omission or other event proof of which is required for conviction of the offence.
- (2) This section applies to the following offences—
  - (a) any offence under this Act;
  - (b) conspiracy to commit an offence under this Act;
  - (c) any attempt to commit an offence under section 3 above; and
  - (d) incitement to commit an offence under this Act.