Computer Misuse Act 1990

1990 CHAPTER 18

Miscellaneous and general

10 Saving for certain law enforcement powers.

Section 1(1) above has effect without prejudice to the operation—

(a) in England and Wales of any enactment relating to powers of inspection, search or seizure; and

(b) in Scotland of any enactment or rule of law relating to powers of examination, search or seizure.

11 Proceedings for offences under section 1.

(1) A magistrates' court shall have jurisdiction to try an offence under section 1 above if—

(a) the accused was within its commission area at the time when he did the act which caused the computer to perform the function; or

(b) any computer containing any program or data to which the accused secured or intended to secure unauthorised access by doing that act was in its commission area at that time.

(2) Subject to subsection (3) below, proceedings for an offence under section 1 above may be brought within a period of six months from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to his knowledge.

(3) No such proceedings shall be brought by virtue of this section more than three years after the commission of the offence.

(4) For the purposes of this section, a certificate signed by or on behalf of the prosecutor and stating the date on which evidence sufficient in his opinion to warrant the proceedings came to his knowledge shall be conclusive evidence of that fact.

(5) A certificate stating that matter and purporting to be so signed shall be deemed to be so signed unless the contrary is proved.

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Changes to legislation: *There are currently no known outstanding effects for the Computer Misuse Act 1990, Cross Heading: Miscellaneous and general. (See end of Document for details)*

(6) In this section "commission area" has the same meaning as in the Justices of the [M1]Peace Act 1979.

(7) This section does not extend to Scotland.

Marginal Citations
M1 1979 c. 55.

12 Conviction of an offence under section 1 in proceedings for an offence under section 2 or 3.

(1) If on the trial on indictment of a person charged with—
(a) an offence under section 2 above; or
(b) an offence under section 3 above or any attempt to commit such an offence;
the jury find him not guilty of the offence charged, they may find him guilty of an offence under section 1 above if on the facts shown he could have been found guilty of that offence in proceedings for that offence brought before the expiry of any time limit under section 11 above applicable to such proceedings.

(2) The Crown Court shall have the same powers and duties in relation to a person who is by virtue of this section convicted before it of an offence under section 1 above as a magistrates' court would have on convicting him of the offence.

(3) This section is without prejudice to section 6(3) of the [M2]Criminal Law Act 1967 (conviction of alternative indictable offence on trial on indictment).

(4) This section does not extend to Scotland.

Marginal Citations
M2 1967 c. 58.

13 Proceedings in Scotland.

(1) A sheriff shall have jurisdiction in respect of an offence under section 1 or 2 above if—
(a) the accused was in the sheriffdom at the time when he did the act which caused the computer to perform the function; or
(b) 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 sheriffdom at that time.

(2) A sheriff shall have jurisdiction in respect of an offence under section 3 above if—
(a) the accused was in the sheriffdom at the time when he did the act which caused the unauthorised modification; or
(b) the unauthorised modification took place in the sheriffdom.

(3) Subject to subsection (4) below, summary proceedings for an offence under section 1, 2 or 3 above may be commenced within a period of six months from the date on which evidence sufficient in the opinion of the procurator fiscal to warrant proceedings came to his knowledge.

(4) No such proceedings shall be commenced by virtue of this section more than three years after the commission of the offence.

(5) For the purposes of this section, a certificate signed by or on behalf of the procurator fiscal and stating the date on which evidence sufficient in his opinion to warrant the proceedings came to his knowledge shall be conclusive evidence of that fact.

(6) A certificate stating that matter and purporting to be so signed shall be deemed to be so signed unless the contrary is proved.

(7) Subsection (3) of section 331 of the [M3]Criminal Procedure (Scotland) Act 1975 (date of commencement of proceedings) shall apply for the purposes of this section as it applies for the purposes of that section.

(8) In proceedings in which a person is charged with an offence under section 2 or 3 above and is found not guilty or is acquitted of that charge, he may be found guilty of an offence under section 1 above if on the facts shown he could have been found guilty of that offence in proceedings for that offence commenced before the expiry of any time limit under this section applicable to such proceedings.

(9) Subsection (8) above shall apply whether or not an offence under section 1 above has been libelled in the complaint or indictment.

(10) A person found guilty of an offence under section 1 above by virtue of subsection (8) above shall be liable, in respect of that offence, only to the penalties set out in section 1.

(11) This section extends to Scotland only.

Marginal Citations

M3 1975 c. 21.

14 Search warrants for offences under section 1.

(1) Where a circuit judge is satisfied by information on oath given by a constable that there are reasonable grounds for believing—

(a) that an offence under section 1 above has been or is about to be committed in any premises; and

(b) that evidence that such an offence has been or is about to be committed is in those premises;

he may issue a warrant authorising a constable to enter and search the premises, using such reasonable force as is necessary.

(2) The power conferred by subsection (1) above does not extend to authorising a search for material of the kinds mentioned in section 9(2) of the [M4]Police and Criminal Evidence Act 1984 (privileged, excluded and special procedure material).

(3) A warrant under this section—

(a) may authorise persons to accompany any constable executing the warrant; and

(b) remains in force for twenty-eight days from the date of its issue.

(4) In executing a warrant issued under this section a constable may seize an article if he reasonably believes that it is evidence that an offence under section 1 above has been or is about to be committed.

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(5) In this section "premises" includes land, buildings, movable structures, vehicles, vessels, aircraft and hovercraft.

(6) This section does not extend to Scotland.

Modifications etc. (not altering text)

C1 S. 14(4) extended (1.4.2003) by 2001 c. 16, ss. 50, 52-54, 68, 138(2), Sch. 1 Pt. 1 para. 51; S.I. 2003/708, **art. 2**
S. 14(4) modified (1.4.2003) by 2001 c. 16, ss. 55, 68, 138(2), Sch. 1 Pt. 3 para. 107 (with s. 57(3)); S.I. 2003/708, **art. 2**

Marginal Citations

M4 1984 c. 60.

15 Extradition where Schedule 1 to the Extradition Act 1989 applies.

The offences to which an Order in Council under section 2 of the [M5]Extradition Act 1870 can apply shall include—

(a) offences under section 2 or 3 above;

(b) any conspiracy to commit such an offence; and

(c) any attempt to commit an offence under section 3 above.

Marginal Citations

M5 1870 c. 52.

16 Application to Northern Ireland.

(1) The following provisions of this section have effect for applying this Act in relation to Northern Ireland with the modifications there mentioned.

(2) In section 2(2)(b)—

(a) the reference to England and Wales shall be read as a reference to Northern Ireland; and

(b) the reference to section 33 of the [M6]Magistrates' Courts Act 1980 shall be read as a reference to Article 46(4) of the [M7]Magistrates' Courts (Northern Ireland) Order 1981.

(3) The reference in section 3(6) to the [M8]Criminal Damage Act 1971 shall be read as a reference to the [M9]Criminal Damage (Northern Ireland) Order 1977.

(4) Subsections (5) to (7) below apply in substitution for subsections (1) to (3) of section 7; and any reference in subsection (4) of that section to England and Wales shall be read as a reference to Northern Ireland.

(5) The following paragraphs shall be inserted after paragraph (1) of Article 9 of the [M10]Criminal Attempts and Conspiracy (Northern Ireland) Order 1983—

"(1A) Subject to section 8 of the Computer Misuse Act 1990 (relevance of external law), if this paragraph applies to an agreement, this Part has effect in relation to it as it has effect in relation to an agreement falling within paragraph (1).

(1B) Paragraph (1A) applies to an agreement if—

(a) a party to it, or a party's agent, did anything in Northern Ireland in relation to it before its formation;

(b) a party to it became a party in Northern Ireland (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 Northern Ireland in pursuance of it;

and the agreement would fall within paragraph (1) 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 Northern Ireland if committed in accordance with the parties' intentions.".

(6) The following paragraph shall be inserted after paragraph (4) of that Article—

"(5) In the application of this Part to an agreement to which paragraph (1A) 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 Northern Ireland.

(6) In this Article "computer misuse offence" means an offence under the Computer Misuse Act 1990.".

(7) The following paragraphs shall be inserted after Article 3(1) of that Order—

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

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

(a) it is done in Northern Ireland; and

(b) it would fall within paragraph (1) 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 Northern Ireland.".

(8) In section 8—

(a) the reference in subsection (2) to section 1(1A) of the [M11]Criminal Law Act 1977 shall be read as a reference to Article 9(1A) of that Order; and

(b) the reference in subsection (3) to section 1(1A) of the [M12]Criminal Attempts Act 1981 shall be read as a reference to Article 3(1A) of that Order.

(9) The references in sections 9(1) and 10 to England and Wales shall be read as references to Northern Ireland.

(10) In section 11, for subsection (1) there shall be substituted—

"(1) A magistrates' court for a county division in Northern Ireland may hear and determine a complaint charging an offence under section 1 above or conduct a preliminary investigation or preliminary inquiry into an offence under that section if—

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(a) the accused was in that division at the time when he did the act which caused the computer to perform the function; or

(b) any computer containing any program or data to which the accused secured or intended to secure unauthorised access by doing that act was in that division at that time.";

and subsection (6) shall be omitted.

(11) The reference in section 12(3) to section 6(3) of the [M13]Criminal Law Act 1967 shall be read as a reference to section 6(2) of the [M14]Criminal Law Act (Northern Ireland) 1967.

(12) In section 14—

(a) the reference in subsection (1) to a circuit judge shall be read as a reference to a county court judge; and

(b) the reference in subsection (2) to section 9(2) of the [M15]Police and Criminal Evidence Act 1984 shall be read as a reference to Article 11(2) of the [M16]Police and Criminal Evidence (Northern Ireland) Order 1989.

Marginal Citations

M6 1980 c. 43.
M7 S.I. 1981/1675 (N.I.26).
M8 1971 c. 48.
M9 S.I. 1977/426 (N.I.4).
M10 S.I. 1983/1120 (N.I.13).
M11 1977 c. 45.
M12 1981 c. 47.
M13 1967 c. 58.
M14 1967 c. 18 (N.I.).
M15 1984 c. 60.
M16 S.I. 1989/1341 (N.I. 12).

VALID FROM 01/10/2008

[[F1]16A Northern Ireland: search warrants for offences under section 1

(1) Where a county court judge is satisfied by information on oath given by a constable that there are reasonable grounds for believing—

(a) that an offence under section 1 above has been or is about to be committed in any premises, and

(b) that evidence that such an offence has been or is about to be committed is in those premises,

he may issue a warrant authorising a constable to enter and search the premises, using such reasonable force as is necessary.

(2) The power conferred by subsection (1) above does not extend to authorising a search for material of the kinds mentioned in Article 11(2) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (privileged, excluded and special procedure material).

(3) A warrant under this section—

(a) may authorise persons to accompany any constable executing the warrant; and

(b) remains in force for twenty-eight days from the date of its issue.

(4) In exercising a warrant issued under this section a constable may seize an article if he reasonably believes that it is evidence that an offence under section 1 above has been or is about to be committed.

(5) In this section "premises" includes land, buildings, movable structures, vehicles, vessels, aircraft and hovercraft.

(6) This section extends only to Northern Ireland.**]**

Textual Amendments

F1 S. 16A inserted (1.10.2008) by Police and Justice Act 2006 (c. 48), ss. 52, 53, **Sch. 14 para. 28** (with s. 38(2)); S.I. 2008/2503, **art. 3(b)**

17 Interpretation.

(1) The following provisions of this section apply for the interpretation of this Act.

(2) A person secures access to any program or data held in a computer if by causing a computer to perform any function he—

(a) alters or erases the program or data;

(b) copies or moves it to any storage medium other than that in which it is held or to a different location in the storage medium in which it is held;

(c) uses it; or

(d) has it output from the computer in which it is held (whether by having it displayed or in any other manner);

and references to access to a program or data (and to an intent to secure such access) shall be read accordingly.

(3) For the purposes of subsection (2)(c) above a person uses a program if the function he causes the computer to perform—

(a) causes the program to be executed; or

(b) is itself a function of the program.

(4) For the purposes of subsection (2)(d) above—

(a) a program is output if the instructions of which it consists are output; and

(b) the form in which any such instructions or any other data is output (and in particular whether or not it represents a form in which, in the case of instructions, they are capable of being executed or, in the case of data, it is capable of being processed by a computer) is immaterial.

(5) Access of any kind by any person to any program or data held in a computer is unauthorised if—

(a) he is not himself entitled to control access of the kind in question to the program or data; and

(b) he does not have consent to access by him of the kind in question to the program or data from any person who is so entitled.

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(6) References to any program or data held in a computer include references to any program or data held in any removable storage medium which is for the time being in the computer; and a computer is to be regarded as containing any program or data held in any such medium.

(7) A modification of the contents of any computer takes place if, by the operation of any function of the computer concerned or any other computer—

(a) any program or data held in the computer concerned is altered or erased; or

(b) any program or data is added to its contents;

and any act which contributes towards causing such a modification shall be regarded as causing it.

(8) Such a modification is unauthorised if—

(a) the person whose act causes it is not himself entitled to determine whether the modification should be made; and

(b) he does not have consent to the modification from any person who is so entitled.

(9) References to the home country concerned shall be read in accordance with section 4(6) above.

(10) References to a program include references to part of a program.

18 Citation, commencement etc.

(1) This Act may be cited as the Computer Misuse Act 1990.

(2) This Act shall come into force at the end of the period of two months beginning with the day on which it is passed.

(3) An offence is not committed under this Act unless every act or other event proof of which is required for conviction of the offence takes place after this Act comes into force.

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