

SERIOUS CRIME ACT 2015

EXPLANATORY NOTES

TERRITORIAL EXTENT

Part 2: Computer Misuse

Commentary on Sections

Section 41: Unauthorised acts causing, or creating risk of, serious damage

129. *Subsection (2)* inserts new section 3ZA into the 1990 Act which creates a new offence of impairing a computer such as to cause serious damage. The existing offence of impairing a computer under section 3 of the 1990 Act carries a maximum penalty of ten years' imprisonment. This maximum penalty is not considered adequate by the Government in those cases where the impact of the action is to cause serious damage, for example to critical national infrastructure. The new offence addresses that gap in the criminal law.
130. New section 3ZA(1) sets out the elements of the offence. The *actus reus* (or conduct element) is that the accused undertakes an unauthorised act in relation to a computer (as in section 3(1)(a) of the 1990 Act) and that act causes, or creates a significant risk of causing, serious damage of a material kind. The *mens rea* (namely the mental elements of the offence) is that the accused, at the time of committing the act, knows that it is unauthorised (as in section 3(1)(b) of the 1990 Act) and intends the act to cause serious damage of a material kind or is reckless as to whether such damage is caused. An unauthorised act is defined in section 17(8) of the 1990 Act as an act where the person doing the act does not have responsibility for the computer in question, which would thereby entitle him or her to determine whether the act is undertaken, and does not have the consent of the person responsible for the computer to commit the act.
131. The term "material kind" is defined in new section 3ZA(2), read with new section 3ZA(3) to (5), as damage to human welfare, the environment, the economy or national security. The other terms used in the definition of a material kind take their normal everyday meaning. It would, in the normal way, be for the jury to determine whether, for example, there had been damage to national security and whether that damage was serious.
132. The offence will be triable on indictment only. As a result of new section 3ZA(6) and (7) the maximum penalty is life imprisonment in respect of threat to life, loss of life or damage to national security. In respect of damage to the economy or environment, it will be 14 years' imprisonment.
133. *Subsection (3)* amends section 3A of the 1990 Act. The amendment ensures that the offence provided for in section 3A also applies to the making etc of hacker tools intended to be used to commit the new section 3ZA offence.