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Misuse Act 1990, Cross Heading: Miscellaneous and general. (See end of Document for details)

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

[[F1]and nothing designed to indicate a withholding of consent to access to any program or data from persons as enforcement officers shall have effect to make access unauthorised for the purposes of the said section 1(1).

In this section "enforcement officer" means a constable or other person charged with the duty of investigating offences; and withholding consent from a person "as" an enforcement officer of any description includes the operation, by the person entitled to control access, of rules whereby enforcement officers of that description are, as such, disqualified from membership of a class of persons who are authorised to have access.]

Textual Amendments

   F1   Words in s. 10 inserted (3.2.1995) by 1994 c. 33, **s. 162(1)**; S.I. 1995/127, art. 2(1), **Sch. 1**

11   Proceedings for offences under section 1.

   [F2] . . . .

Textual Amendments

   F2   S. 11 repealed (1.10.2008) by Police and Justice Act 2006 (c. 48), ss. 52, 53, Sch. 14 para. 23, **Sch. 15 Pt. 4** (with s. 38(2)); S.I. 2008/2503, **art. 2**

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

F3. . . . .

Textual Amendments

F3   S. 12 repealed (1.10.2008) by Police and Justice Act 2006 (c. 48), ss. 52, 53, Sch. 14 para. 24, **Sch. 15 Pt. 4** (with s. 38(2)); S.I. 2008/2503, **art. 2**

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

    [F4(b)   any computer containing any program or data to which the accused by doing that act secured or intended to secure unauthorised access, or enabled or intended to enable unauthorised access to be secured, 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 **[F5**he did the unauthorised act (or caused it to be done)**]** ; or

    [F6(b)   the unauthorised act was done in relation to a computer in the sheriffdom.**]**

(3) **F7**. . . . .

(4) **F7**. . . . .

(5) **F7**. . . . .

(6) **F7**. . . . .

(7) **F7**. . . . .

(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 **F8**. . . .

(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.

Textual Amendments

F4   S. 13(1)(b) substituted (1.10.2007) by Police and Justice Act 2006 (c. 48), ss. 52, 53, **Sch. 14 para. 25(2)** (with s. 38(1)); S.S.I. 2007/434, **art. 2**

F5   Words in s. 13(2)(a) substituted (1.10.2007) by Police and Justice Act 2006 (c. 48), ss. 52, 53, **Sch. 14 para. 25(3)(a)** (with s. 38(4)); S.S.I. 2007/434, **art. 2**

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F6   S. 13(2)(b) substituted (1.10.2007) by Police and Justice Act 2006 (c. 48), ss. 52, 53, **Sch. 14 para. 25(3)(b)** (with s. 38(4)); S.S.I. 2007/434, **art. 2**
F7   S. 13(3)-(7) repealed (1.10.2007) by Police and Justice Act 2006 (c. 48), ss. 52, 53, Sch. 14 para. 25(4), **Sch. 15 Pt. 4** (with s. 38(2)(4)); S.S.I. 2007/434, **art. 2**
F8   Words in s. 13(8) repealed (1.10.2007) by Police and Justice Act 2006 (c. 48), ss. 52, 53, Sch. 14 para. 25(5), **Sch. 15 Pt. 4** (with s. 38(2)(4)); S.S.I. 2007/434, **art. 2**

14   Search warrants for offences under section 1.

F9
. . . .

Textual Amendments
F9   S. 14 repealed (1.10.2008) by Police and Justice Act 2006 (c. 48), ss. 52, 53, Sch. 14 para. 26, **Sch. 15 Pt. 4** (with s. 38(2)); S.I. 2008/2503, **art. 2**

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

F10
. . . .

Textual Amendments
F10   S. 15 repealed (1.1.2004) by Extradition Act 2003 (c. 41), ss. 219, 220, 221, Sch. 3 para. 7, **Sch. 4**; S.I. 2003/3103, **art. 2** (subject to savings in order arts 3-5 as amended by S.I. 2003/3312 and S.I. 2003/3258)

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.

[**F11**(1A) In section 1(3)(a)—

   (a)   the reference to England and Wales shall be read as a reference to Northern Ireland; and
   (b)   the reference to 12 months shall be read as a reference to six months.]

(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 **M1**Magistrates' Courts Act 1980 shall be read as a reference to Article 46(4) of the **M2**Magistrates' Courts (Northern Ireland) Order 1981.

[**F12**(2A) In section 2(5)(a)—

   (a)   the reference to England and Wales shall be read as a reference to Northern Ireland; and
   (b)   the reference to 12 months shall be read as a reference to six months.]

(3) **F13**. . . . .

[**F14**(3A) In section 3(6)(a)—

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

      (b)   the reference to 12 months shall be read as a reference to six months.**]**

[^{F15}(3B) In section 3A(5)(a)—

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

      (b)   the reference to 12 months shall be read as a reference to six months.**]**

    (4) **[**^{F16}Subsection (7) below shall apply in substitution for subsection (3) of section 7**]**; ^{F17}. . . .

  ^{F18}(5) . . . .

  ^{F18}(6) . . . .

    (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 ^{F18} . . . .

      (b)   the reference in subsection (3) to section 1(1A) of the ^{M3}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) ^{F19}. . . . .

  (11) ^{F19}. . . . .

  (12) ^{F19}. . . . .

Textual Amendments

  F11 S. 16(1A) inserted (1.10.2008) by Police and Justice Act 2006 (c. 48), ss. 52, 53, **Sch. 14 para. 27(2)** (with s. 38(2)); S.I. 2008/2503, **art. 2**

  F12 S. 16(2A) inserted (1.10.2008) by Police and Justice Act 2006 (c. 48), ss. 52, 53, **Sch. 14 para. 27(3)**; S.I. 2008/2503, **art. 2**

  F13 S. 16(3) repealed (1.10.2008) by Police and Justice Act 2006 (c. 48), ss. 52, 53, Sch. 14 para. 27(4), **Sch. 15 Pt. 4** (with s. 38(4)); S.I. 2008/2503, **art. 2**

  F14 S. 16(3A) inserted (1.10.2008) by Police and Justice Act 2006 (c. 48), ss. 52, 53, **Sch. 14 para. 27(5)** (with s. 38(4)); S.I. 2008/2503, **art. 2**

  F15 S. 16(3B) inserted (1.10.2008) by Police and Justice Act 2006 (c. 48), ss. 52, 53, **Sch. 14 para. 27(6)**; S.I. 2008/2503, **art. 2**

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F16 Words in s. 16(4) substituted (4.9.1998) by 1998 c. 40, s. 9(1), **Sch. 1 Pt. II para. 6(3)(a)** (with s. 9(3))
F17 Words in s. 16(4) repealed (1.10.2008) by Serious Crime Act 2007 (c. 27), ss. 63(1)(2), 92, 94, Sch. 6 para. 59(6), **Sch. 14** (with Sch. 13 para. 5); S.I. 2008/2504, **art. 2**
F18 S. 16(5)(6)(8)(a) repealed (4.9.1998) by 1998 c. 40, s. 9(1)(2), Sch. 1 Pt. II para. 6(3)(b), **Sch. 2 Pt. II** (with s. 9(3))
F19 S. 16(10)(11)(12) repealed (1.10.2008) by Police and Justice Act 2006 (c. 48), ss. 52, 53, Sch. 14 para. 27(4), **Sch. 15 Pt. 4** (with s. 38(2)); S.I. 2008/2503, **art. 2**

Marginal Citations
M1 1980 c. 43.
M2 S.I. 1981/1675 (N.I.26).
M3 1981 c. 47.

[F20 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
F20 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 [**F21**or to enable such access to be secured]) 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 [**F22**but this subsection is subject to section 10.]

(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) **F23**. . . . .

[**F24**(8) An act done in relation to a computer is unauthorised if the person doing the act (or causing it to be done)—

    (a) is not himself a person who has responsibility for the computer and is entitled to determine whether the act may be done; and

    (b) does not have consent to the act from any such person.

In this subsection "act" includes a series of acts.]

(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.

Textual Amendments

F21   Words in s. 17(2) inserted (S.) (1.10.2007) by Police and Justice Act 2006 (c. 48), ss. 52, 53, **Sch. 14 para. 29(2)** (with s. 38(1)); S.S.I. 2007/434, **art. 2** (the inserting provision being repealed for E.W.N.I. (1.10.2008) by 2007 c. 27, ss. 61(5), 92, 94, Sch. 14 (with Sch. 13 para. 5); S.I. 2008/2504, **art. 2(a)(i) (viii)**)

F22   Words in s. 17(5)(b) inserted (3.2.1995) by 1994 c. 33, **s. 162(2)**; S.I. 1995/127, art. 2(1), **Sch. 1**

F23   S. 17(7) repealed (1.10.2007 for S. and 1.10.2008 otherwise) by Police and Justice Act 2006 (c. 48), ss. 52, 53, Sch. 14 para. 29(3), **Sch. 15 Pt. 4** (with s. 38(4)); S.S.I. 2007/434, **art. 2**; S.I. 2008/2503, **art. 2**

F24   S. 17(8) substituted (1.10.2007 for S. and 1.10.2008 otherwise) by Police and Justice Act 2006 (c. 48), ss. 52, 53, **Sch. 14 para. 29(4)** (with s. 38(4)); S.S.I. 2007/434, **art. 2**; S.I. 2008/2503, **art. 2**

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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